



## **REVIEW OF INTERPRETATION OF “WEEE ARISING FROM PRIVATE HOUSEHOLDS” AS DEFINED IN THE WEEE DIRECTIVE (2012/19/EU)**

Proposal to amend existing BIS statutory guidance to reflect the interpretation of “WEEE from private households” set out in the Commission’s FAQ document published on 16 April 2014.

<http://ec.europa.eu/environment/waste/weee/pdf/FAQ%20on%20the%20new%20WEEE%20Directive.pdf>

### **Background**

The Recast WEEE Directive defines WEEE from private households as:

*WEEE which comes from private households and WEEE which comes from commercial, industrial, institutional and other sources which, because of its nature and quantity, is similar to that from private households. Waste from EEE likely to be used by both private households and users other than private households shall in any event be considered to be WEEE from private households.*

The UK’s current interpretation includes an assessment of both nature and quantity of any items being discarded by businesses in order to establish whether to classify as household (B2C) or non household (B2B) WEEE by those collecting and treating the WEEE.

This appears at variance with the Commission’s interpretation which determines that nature alone will determine whether products that could be used by households or businesses (so called “dual use” products) should be classified as B2C or B2B WEEE.

*Example: A refrigeration unit used by supermarkets for food storage on the shopfloor would be classified as B2B EEE/WEEE under both interpretations. However fridges at office tea points of a nature similar to those used by households would always be reported as B2C EEE/WEEE under the Commission’s interpretation. Under the current UK interpretation it could be classified as B2B EEE and the classification at end of life would be conditional on the quantity of units being discarded.*

### **Potential impact of embracing the Commission’s Interpretation**

#### **Producers**

The impact on any individual producer would be dependent on the following:

- The portion of their output (current and historical) that is currently classified as B2B and is likely to be interpreted as ‘dual use’ and therefore B2C going forward;
- The change in cost associated with recycling of these goods, that is, whether the producer has passed on responsibility for doing so in the past and will now be obligated to finance recycling going forward; and
- Whether the resultant WEEE is a net revenue or net cost to recycle, and whether it is likely that this may change in the future.



Producers for whom a significant portion of their output is changing from B2B to 'dual use' classification, and that didn't previously retain end of life responsibility (or if it did, was rarely utilised), will potentially experience the greatest change in costs associated with WEEE generated since they will be required to share the costs of meeting the annual household WEEE collection target.

The impact of the changed UK interpretation will be limited for those producers that are able to prove that their goods should maintain their B2B classification. Formal guidance will be issued in this respect, as producers (especially those with contracts to transfer responsibility of disposal to the business end user) have a financial incentive to prove whether this is the case.

### **PCSs**

The PCS sector as a whole is likely to gain from the changed interpretation, as a greater proportion of total WEEE generated will potentially have producer responsibility assigned to it via the WEEE collection target. B2B producers whose goods are being newly classified as 'dual use' will have to engage with a PCS to fulfil these new B2C WEEE obligations for the first time. The extent to which different PCSs benefit from the increased size of the B2C market will vary between schemes.

### **Business end users**

The impact on business end users will depend on the portion of their consumed EEE that is changing from a B2B classification to 'dual use'. In principle, their costs will decrease as a greater proportion of these goods will have producer responsibility assigned to them. In practice, however, this is dependent on the extent to which producers originally retained responsibility for the disposal of B2B goods; if a given business end user did not have recycling obligations contractually transferred to them from the producer (that is, the producer retained responsibility), they are unlikely to be greatly impacted by the change.

### **Distributors**

Distributors supplying goods classified as 'dual use' - and therefore having to adhere to B2C take-back obligations - will have to either join the Distributor Take-back Scheme or establish their own take back arrangements. Neither of these options are likely to impose a significant cost on distributors who may already be supplying householders and therefore already have a take-back obligation. It will however need to be addressed in revised guidance.

The extent to which any such newly established take back facility is utilised depends on the proportion of WEEE generated from their customers (business end users) that is a cost stream. Business end users are unlikely to release 'revenue' generating WEEE streams into disposal channels, meaning that such take back schemes would mainly be in receipt of 'cost' WEEE streams. Their popularity would therefore depend on the volume of 'cost' WEEE streams generated from business end users in any given year.



### **AATFs**

Possible increase in proportion of their feedstock, which is not revenue generating, being financed by producers since some dual use WEEE is likely to be financed by producers for the first time.

### **Local Authorities**

Those providing businesses with access to HWRCs would be able to get their PCS to finance the cost of treating dual use WEEE received at Designated Collection Facilities.

### **Cost Impacts**

Any additional cost impacts resulting from a change of interpretation are likely to fall on producers. To help us quantify those impacts stakeholders are invited to supply any of the following data:

- Evidence in relation to any of the factors stated above in relation to producer costs;
- Any indication of the size/potential value of contract changes to PCSs as a result of the enlarged B2C market and any associated competition analysis; and
- Information on business end users' contractual obligations (that is, the extent to which they current have recycling obligations transferred to them from producers and what the associated costs are).

### **Proposal:**

In order to embrace a position that reflects the Commission's interpretation we propose the following:

- That the current BIS Statutory Guidance is amended to reflect more closely the Commission's interpretation of "WEEE from private households, as set out in their FAQ document.
- That the onus should be on producers to determine whether an item is "dual use" based on its product design, intended use and whether it is likely to arise as waste from households. The presumption would be that EEE should all be classified as B2C unless the producer can provide evidence that the product, due to its nature and design is not intended for use in private households and is therefore unlikely to appear as household waste.

*Example: A 'vacuum cleaner' could be classified as B2B only if it was clearly designed for non household applications. This might for example be based on power rating, filtration elements, hose/nozzle design etc. A producer might additionally argue that the distribution channel was such that it was unlikely to be purchased by a householder and therefore unlikely to arise as household WEEE. It could be argued that even though it was aimed at a B2B market and*



*not sold via high street retailers there could nevertheless be instances where it could end up in a household. However the determining factor would be the design and intended use of the product, which would also indicate how likely it would be for it to appear as household waste.*

*It would not be sufficient to claim the EEE was B2B based only on the distribution channels used, i.e. that they were distribution channels for professional users.*

*Another example would be lamps intended for street lighting –they are designed and intended for commercial end users but could nevertheless occasionally end up as household waste. Standard fluorescent tubes and CFLs would be classified as dual use.*

- That additional guidance is developed by the agencies in cooperation industry to assist both producers and AAFTs appropriately classify EEE and WEEE from businesses as either B2B or B2C.

### **Timing**

Recognising the need to ensure sufficient time for guidance to be developed in cooperation with industry and the challenges of making changes mid-compliance year two options are proposed that introduce changes effective from 1 January 2015:

- That the revised interpretation of dual use B2B comes into effect from 1 January 2015, and will require all EEE placed on the market in 2014 to be reported under the revised position by the 31<sup>st</sup> January 2015 as per existing reporting arrangements. Producers would be required to assess their B2B data at year end to determine how much should be reported for 2014 as dual use. The resulting increase in B2C reported EEE being added to their 4<sup>th</sup> quarter B2C return. This will enable the 2015 market share for producer responsibilities for B2C WEEE to be properly allocated;

or

- Introduce dual-use reporting for 2015 with no adjustments made to EEE / WEEE data reporting for 2014.

In both instances BIS will reflect in the 2015 B2C collection targets a tonnage of WEEE that has moved from being classed as B2B to B2C. Thus, it is likely that the 2015 collection targets will be higher than would otherwise have been the case, as a result of adopting the revised interpretation on household EEE/WEEE.

### **Confidentiality and Data Protection**

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and



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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.

**Comments are sought on the above by Friday 11 July 2014 and should be sent to [weee@bis.gsi.gov.uk](mailto:weee@bis.gsi.gov.uk)**

BIS WEEE Team