

Count the ways producers pay...

An innovative update on legislation governing WEEE recycling

By Derek Morgan

Quick: It's not too late to be annoyed by the current WEEE delays!

In case you didn't know: DIRECTIVE 2002/96/EC, on waste electrical and electronic equipment (WEEE), of 27 January 2003... Article 17, paragraph 1: "Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 13 August 2004."

As at the publication date of this magazine, the UK has missed this deadline by no less than 713 days. We are about to enter the latest "final" round of public consultation prior to implementation. Currently, producer registration is expected to start on 1st January 2007. The Government wants the cost responsibilities off its books by the next budget cycle in April, and full implementation is hoped for by 1st July 2007, a full 1,062 days late... and just 549 days before it all changes.

On 31st December 2008, the EU will change the recycling and recovery targets for the different categories of WEEE, they will introduce additional targets for reuse for each category and Category 8 (medical devices) will be measured for the first time.

To put this in its proper context, during that same period, the EU additionally plan to introduce and complete a programme of simplification that covers 222 basic legislations and over 1,400 related legal acts, including the WEEE Directive and the 1975 Waste Framework Directive which provides the context and foundation for our industry, including the related RoHS, EuP, Batteries and Hazardous Waste Directives.

Per the EU Commission... "In the Competitiveness perspective, it is not enough to deal only with Community rules which represent only part of the regulatory environment in which industry must operate; national rules too must be addressed. The simplification of national measures is the responsibility of the Member States. The Commission recommends that Member States set up simplification programmes and supporting structures adapted to their national circumstances. Exchange of best practices and peer reviews on this issue are strongly encouraged."

No matter what you might think about the EU and its Commission, our track record here in the UK is deeply embarrassing. There is still no public timetable on the DTI's web site that maps the way towards full implementation. Not that they haven't been busy of course, the web site has been restructured, the deck chairs reorganised, and almost laughably, "sustainability" now comes under the general theme of "innovation".

However, in a nod towards the EU simplification programme, I have to give the DTI credit for recently the link to the local Better Regulation Commission (BRC) who significantly expanded their team in April this year. Encouragingly there might even be a champion for us via the recent appointment of Lord James Lindsay. He is described as "currently active in environmental and sustainability issues", and importantly, "has a strong interest in the use of voluntary agreements & standards".

The BRC believes that regulations will hinder innovation if they: are over prescriptive; tie in particular technology; change all the time with little notice; look at the world through a rear view mirror; and, are not targeted. I'm not sure what their feelings are about inconsistent and parochial regulations that hinder the smooth, and equitable, flow of goods and services across the EU. I'd like to know.

Strangely, until 9th June this year the BRC were still soliciting ideas about what to do. Do you have a suggestion? Here's mine... free of charge, subject to public scrutiny, and only 48 days late --> Halt the current practice of treating transposition as an exercise in innovation!

The Government has [already] held three public consultations on proposals for implementing the WEEE Directive. Apparently, the delays are driven by concerns for you... "The Government is keen to allow businesses as much time as possible to prepare for the requirements of the WEEE Directive". What complete rubbish.

Is it cultural arrogance? Must we really invent a better mousetrap before we address the growing plague?

Go back if you will, and read the DTI's most recent draft guidelines for WEEE (etched on stone tablets sometime back in 2004). National Clearing House - what was that all about? Where is that a requirement of the WEEE Directive? How about the massive disconnect between household and business WEEE that has been allowed to take hold here in the UK more than anywhere else in Europe?

I'll tell you exactly what has been going on during the past days, months and, sadly, years. Someone in "the service" has not shifted one iota from an agenda for bureaucratic innovation at the expense of the environment. Having failed to win investment support (or develop a viable business case) for the National Clearing House, watch out for the new "WEEE Exchange" which has a strangely similar purpose. Frustratingly, the Government acknowledges that there is a lot of detail still to be worked out, including setting up the WEEE Exchange, the timing of when producers will pay, and how the costs will be shared. So what the heck have they been doing if we have made no progress on these issues in the 756 days since their last (and to date, only) draft guidance? To compare, in less than half that time we have recently been informed that Prince Charles has personally written 2,247 letters, carried out 650 public engagements and helped to raise £110million for his 16 main charities. Now that's how to do a public consultation.

The WEEE Directive has been around for so long that even I sometimes forget its principles in the midst of this messy consultation. Let me remind everyone of the first 14 words of the Objectives... "The purpose of this Directive is, as a first priority, the prevention of waste".

The bureaucratic waste must end! A timetable is promised, when what we need is commitment.

Contrary to the comments of Minister Malcolm Wicks, "business" has NOT welcomed the delays. Business is confused and in that confusion we are in a worse state than before. Confusion is leading to mass inaction in the market, and corporations in particular assume it is someone else's problem. Simply, the delayers will be directly responsible for more than 1,000 days of needless harm to the environment. (Sorry for the imprecision, there's no certainty about the end date).

Producers, by contrast, DO welcome the delays, and argue for even more time. But then again, under the "polluter pays" principle it isn't difficult to recognise why. Like RoHS, the WEEE Directive seeks to change producer behaviour... indeed Article 14 states (in part) that "Member States shall take appropriate measures so that producers do not prevent, through specific design features or manufacturing processes, WEEE from being reused..." It is my contention that the producers have found another way to prevent this – through endless consultation and bickering with a Government that is petrified of decision making, ironically in an area where Europe has already taken all the hard decisions for them. Bless.

Unfortunately, whilst it can be very tempting to take the option of EU infringement proceedings against our own Government under Article 226, there is no censure available for individual incompetence. I'm beginning to feel that it will be the EU simplification programme that eventually clears the air. I just hope they aren't waiting for our learned friends on the Better Regulation Commission to take the lead.

In their 14 February 2006 consultation paper: DEFRA identify that by 2010, between 228 and 269 additional Materials Recovery Facilities will be required. Will you invest the estimated £10 billion that is required over the next 1,254 days? In less time than it will take to complete just 1 new Olympic stadium, who will?

Your recycling business is under threat. The producers are sitting comfortable and making you pay for their mess, and the Government have allowed this to go on for too long. If you think that dealing with monopoly-like compliance schemes is going to make life easier and drive better practice you are wrong. Get angry!

Enjoy the next consultation. There's everything to gain, or lose.

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