

New Guidance from Environment Agency on B2B WEEE obligations

15 February 2007

A presentation given by Jane Skinner at the Environment Agency on 14 February provides new important guidance to Producer Compliance Schemes on obligations for B2B WEEE.

This document highlights the implications to producers who wish to use their own arrangements for WEEE collection, treatment and recycling, and confirms that ENVIRON's PCS (www.b2bwEEE-scheme.com) continues to fully meet all of the requirements in this new guidance.

This document also raises important issues for any producers who are considering using commercial contracts to seek to offload all their obligations for WEEE to end-users.

This document contains important information on legal requirements in the WEEE Regulations and B2B producers should check how the Producer Compliance Scheme that they are considering joining actually meets these requirements.

Background information

Previous correspondence between ENVIRON and the Environment Agency has explained that Regulation 9 (1) places a legal responsibility on a producer to finance WEEE collection, treatment, recovery and environmentally sound disposal. Similarly, Regulation 23 (1) of the WEEE Regulations places a legal responsibility on a Scheme to finance the WEEE collection, treatment, recovery and environmentally sound disposal specified in Regulation 9 (1) for any producer who is a member of the Scheme during a compliance period.

Regulation 9 (2) provides an opportunity for producers to agree alternative financial arrangements with end-users and Regulation 23 (2) provides an opportunity for Schemes to agree alternative financial arrangements with producers. These commercial arrangements are formed outside the Regulations and do not change any of the legal responsibilities defined in 9 (1) and 23 (1).

A Scheme is not able to disclaim its responsibilities under the Regulations by trying to pass that responsibility on to producers. The Scheme is always responsible for ensuring compliance with Regulations 24, 25, 26, 27 and 29 for WEEE specified in Regulation 9 (1) for any producer which is a member of the Scheme during a compliance period.

Similarly, a producer is not able to disclaim its responsibilities under the Regulations by trying to pass that responsibility on to end users. The producer is always responsible (through its membership of a PCS) for its obligations under the WEEE Regulations.

Producers who wish to use their own arrangements for WEEE collection, treatment and recycling

Slide 5 in the presentation given by Jane Skinner at the Environment Agency on 14 February confirms that

*"Where the **producer** makes arrangements for the collection and treatment of WEEE from its customers the producer **must** report to their Producer Compliance Scheme on the levels of treatment taking place and arranged for evidence to be passed to the Producer Compliance Scheme so that the Producer Compliance Scheme can make the declaration of compliance to the Environment Agency"*

Slide 5 also notes that it is the scheme's responsibility to check that the producer's arrangements will ensure that the **Scheme can comply with the obligations that the Scheme has under the WEEE Regulations.**

The legal responsibility in the WEEE Regulations for WEEE collection, treatment and recycling always remains with the Scheme under Regulation 23 (1) and the Scheme is responsible for ensuring that Regulations 24, 25, 26, 27 and 29 are complied with in all cases.

Thus if a scheme establishes a commercial arrangement which enables the producer to use its own arrangements for WEEE collection, treatment and recycling, the WEEE regulations require the Scheme to check that these arrangements comply with Regulations 24, 25, 26, 27 and 29. Remember that the legal obligations in 9 (1) and 23 (1) always apply, so the commercial contract does not mean that the scheme is transferring its legal obligations to the producer - it is simply making a separate commercial arrangement with the producer which is outside the regulations.

Regulation 24 places an obligation on the Scheme to ensure that arrangements are set up to prioritise the reuse of whole appliances. The Environment Agency confirmed that the Scheme would have to ensure that the producers' arrangements prioritise the reuse of whole appliances.

Regulation 25 places an obligation on the Scheme to ensure that WEEE is treated at an Approved Authorised Treatment Facility (AATF) or through an approved exporter. (NB Reg 25 (1) (b) (i) has an incorrect reference to an ATF which is an error in the Regulations). The Environment Agency confirmed that the Scheme would have to ensure that producers arrangements ensure that WEEE is treated at an Approved Authorised Treatment Facility (AATF).

Regulation 26 places an obligation on the Scheme to ensure that systems are set up to provide for recovery of WEEE to meet the recycling and recovery targets. In particular, **"at the end of any relevant compliance period, each operator of a scheme shall meet the following targets for WEEE"**. The Environment Agency confirmed that the Scheme would have to ensure that producers arrangements provide for recovery of WEEE to meet the recycling and recovery targets.

Regulation 27 places an obligation on the Scheme to report quarterly on the number of units which are reused and the weight of equipment which is sent for treatment. The Environment Agency confirmed that the Scheme would have to ensure that producers arrangements provide this information to the Scheme.

Regulation 29 places an obligation on the Scheme to provide an annual declaration of compliance, including evidence notes from AATFs. The Environment Agency confirmed that the Scheme would have to ensure that producers arrangements provide this information to the Scheme, including requiring the producers AATF to provide evidence notes to the Scheme.

Producers who are considering using commercial contracts to seek to offload all their obligations for WEEE to end-users.

Slide 6 in the presentation given by Jane Skinner at the Environment Agency on 14 February confirms that

"Where the business end-user has a contractual arrangement with the producer to take physical and financial responsibility for treatment of the WEEE

- the producer's obligation does not pass to the end-user"

and most importantly

- the scheme still has an obligation to demonstrate compliance with this obligation

The Environment Agency then highlighted the additional work that schemes may need to do if they are considering recommending this option to their members

- how will you make sure this happens"

If a producer does establish a commercial contract which requires the end-users to *"take physical and financial responsibility for treatment of the WEEE"*, the WEEE regulations (as they are currently written) require the Scheme to check that these arrangements comply with Regulations 24, 25, 26, 27 and 29 in each and every case. Remember that the legal obligations in 9 (1) and 23 (1) always apply, so the commercial contract does not mean that the producer is transferring its legal obligations to the end-user - it is simply making a separate commercial arrangement which is outside the regulations.

Regulation 24 places an obligation on the Scheme to ensure that arrangements are set up to prioritise the reuse of whole appliances. As the WEEE Regulations are currently written, the Scheme would have to ensure that end-users arrangements prioritise the reuse of whole appliances.

Regulation 25 places an obligation on the Scheme to ensure that WEEE is treated at an Approved Authorised Treatment Facility (AATF) or through an approved

exporter. (NB Regulation 25 (1) (b) (i) has an incorrect reference to an ATF which is an error in the Regulations). As the WEEE Regulations are currently written, the Scheme would have to ensure that end-users arrangements ensure that WEEE is treated at an Approved Authorised Treatment Facility (AATF).

Regulation 26 places an obligation on the Scheme to ensure that systems are set up to provide for recovery of WEEE to meet the recycling and recovery targets. In particular, **"at the end of any relevant compliance period, each operator of a scheme shall meet the following targets for WEEE"**. As the WEEE Regulations are currently written, the Scheme would have to ensure that end-users arrangements provide for recovery of WEEE to meet the recycling and recovery targets. In order for the Scheme to meet this requirement it will need to gather information from all of the producer's end-users. In practical terms, this simply is not possible.

Regulation 27 places an obligation on the Scheme to report quarterly on the number of units which are reused and the weight of equipment which is sent for treatment. As the WEEE Regulations are currently written, the Scheme would have to ensure that it gathered this information from end-users. In practical terms, this simply is not possible.

Regulation 29 places an obligation on the Scheme to provide an annual declaration of compliance, including evidence notes from AATFs. As the WEEE Regulations are currently written, the Scheme is still required to meet this obligation even if the end-user *"takes physical and financial responsibility for treatment of the WEEE"*.

However, Schedule 8 Part 2 Para 9 states that an AATF shall only issue an evidence note to a scheme (or a producer in an exceptional case where a scheme has lost its licence and the producer has not yet joined another scheme). Under no circumstances can an evidence note be issued to an end-user. So it is practically impossible for a scheme to meet its requirements under Regulation 29 in this case (unless it ensured that all end-users instructed all of their recyclers to send evidence notes to the Scheme)

Communication of collection arrangements to end-users

The Environment Agency noted at the meeting on 14 February that Schemes need to ensure that end-users can find out about collection and recycling arrangements. Slide 7 and its footnotes note that for some Schemes it is *"difficult to understand how collection will work"*. ENVIRON's approach to meeting this requirement is to install a web-based WEEE system on the producer's website which clearly communicates collection and recycling arrangements to end-users.

Tracking WEEE from different producers

Slide 7 and its foot notes also notes that Schemes collection arrangements need to ensure that WEEE can tracked to a particular producer when it arrives at the AATF. ENVIRON's web-based WEEE systems include recycling labels which the end-user must complete to send the WEEE for recycling. The recycling labels include the producer's brand name so that the WEEE can be easily allocated to the correct producer when it arrives at the AATF.

We hope you find this information useful. Further information is available at www.b2bweee-scheme.com

Best regards

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