



Pharma Asks: What can WEEE do?

The Waste Electronic and Electrical Equipment (WEEE) legislation hits all individuals and non-householders (industry, business, civil service, health authorities, schools, hospitals, offices and charities) in different ways; Carl Krüger at B2B Compliance investigates



Carl Krüger is an internationally-experienced strategic and environmental consultant. After working with Ernst & Young, BPB plc and HBOS, he joined Strateco Limited, a strategic environmental consultancy, as Director. One of his roles within Strateco is to facility manage the WEEE Compliance Scheme, B2B Compliance. As Project Director of B2B Compliance, Carl has pursued the cause of this producer-led compliance scheme since well before the legislation was even in final form. He has given seminars and workshops numerous companies and written a number of articles in both trade and business press on WEEE, its impact and the solutions. Carl has an MSc in Environmental Technology from Imperial College, London and an MBA in Business Administration from Cranfield University.

Everyone in the pharmaceutical world has responsibilities under the 2006 WEEE Regulations – all individuals (householders), all organisations and all operations where an electrical item is used. The wide-ranging impact of this catch-all legislation has not generally been recognised as yet – let alone the appropriate actions initiated – but general awareness is rising.

The basic tenet behind the legislation is that the producer shall pay for the recovery and recycling of the electrical items once they are declared waste. The impact on the individual is that they are likely to face higher prices and will be expected to separate WEEE when they drop off their waste at a civic amenity site or hand it back over the counter at a retailer. The impact on a non-producer organisation is that they can now get their WEEE removed from their premises with the producer paying the recovery and recycling costs. And the impact on a producer is that they have to pay for this. Ultimately, of course, prices on all electrical and electronic equipment (EEE) will go up to compensate for this final factor but, until all producers have taken things on board, there may be price fluctuations to compensate.

EEE, or Electrical and Electronic Equipment, is at present defined as widely as that. There are specific areas where EEE is deemed out of scope for this piece of legislation (military and

shipboard equipment) as well as certain uses and approaches (industrial plant components and so forth). The danger is that the guidance on scope is at times vague, and should ideally be read with a strategic insight into what is best for the organisation involved.

The producer is defined as: the original manufacturer; the company that re-brands a bought-in product; or the company that imports a product into the UK. Thus, producers can be involved in any operation that is not the final user of the EEE.



It is possible to legally avoid producer obligations under certain circumstances through strategic repositioning in the marketplace. Usually the cost of so doing is greater than the benefits, but this should be considered when new enterprises are starting up. For example, an importer is classified as an obligated producer. If, instead of importing the product, the organisation arranges the import as an agent (and thus never taking legal ownership), then it may avoid taking on any WEEE obligations. Thus, a large multinational could sidestep most of the WEEE legislation across Europe by converting sales offices to sales agents (at least officially). A good compliance scheme can advise on how this might best be carried out – but be aware that, unhelpfully, the legislation varies across the EU.

The final user is the organisation or individual that uses the EEE and, when they are finished with it, declares it as ‘WEEE.’ If the final user is a householder, the market is said to be ‘household WEEE’ and is given the common name of ‘business to consumer’ (B-to-C) WEEE. Note that this is not the normal use of this phrase – previously this had meant that the sale was from a single business to consumers. Here the whole supply chain receives the same tag so the manufacturer, distributor, warehouse operator, retailer and so forth, all the way to the final user, are defined as business to consumer – which hitherto would have been rejected out of hand as being unrepresentative of their roles in the marketplace. If the final user is anything other than a householder – a hospital, surgery, business, industry, charity or government office – the market is said to be ‘non-household WEEE’ or ‘business-to-business’ WEEE.

Why does the business-to-business/business-to-consumer split matter? Because the financial obligations and the requirements on producers in the two market areas are totally different.

Business to consumer	Business to business
Collection of WEEE from DCF	Collection from back door of final user
Obligation calculated from market share of inputs onto new products market	Obligation calculated on amounts returned as WEEE at end-of-life
Regular collections from pre-set sites	Irregular collections from infinite sites
Tighter legal definitions	Looser legal definitions
Expected to be 80 per cent of all WEEE arisings	Expected to be 20 per cent of all WEEE arisings
Political focus (individuals vote after all)	Political disinterest (no votes from companies)

There is a recognition that most EEE producers have previously had little knowledge of, and often no interest in, the legal bureaucracy and the recovery and recycling sectors. Consequently, the legislation requires producers to join a ‘compliance scheme’ that will handle some of these roles for the producer. The simplest compliance schemes provide data submission services that allow producers to comply with the legislation, but leave the producers with most of the recovery and recycling work still to be done.

The better compliance schemes co-ordinate the recovery and recycling for their members, and provide other services besides bureaucratic form-filling, such as helplines, seminars and lobbying at international levels. The cost of joining a scheme

will be dependent on the drivers behind that scheme and the services offered.

COMPLIANCE SCHEMES

There are 37 distinct schemes available in the UK for producers to join. So how is the producer supposed to know which to choose? This is not a pure price comparison, as the offerings vary greatly. For a clearer picture, it is often better to look at the factors that combined to create the scheme in the first place.

Some schemes have been set up by companies that want to handle WEEE themselves – they create a scheme, join it as its only member and have therefore met that part of the legal requirements. This works best with producers that tend to have only a paper obligation to join a scheme so nothing further will have to be done (but this is an expensive route to go down as it costs £12,174 in fees to the authorities to register a scheme), or where they are already carrying out recovery and recycling so it simply meshes with their existing operations.

The next group can be subdivided into three parts:

- ◆ Some schemes have been set up by operators in the logistics and waste businesses – they calculated that they were already active in these areas, and that this would be a good way to pull in more business

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Compliance Scheme Facts

Compliance Scheme Legalities

Producers have to join a compliance scheme; they may not change compliance scheme mid-compliance period (a compliance period runs to 31st December). Schemes differ in what level of activity they undertake for the producer. As a minimum, compliance schemes must submit data on behalf of the producer members and ensure that the recycling targets are met.

Financials

Missing targets is not a legal option. The amount of money that may need to be spent to attain targets is not limited. There is no *de minimis* so producers of all levels of activity have to follow this approach. Costs incurred by the schemes should be expected to be recouped from producer members.

Labelling Rules

The label must be printed visibly, legibly and indelibly. There is a specific European Standard (EN 50419) that details the proportions that must be used, the tests to prove the indelible nature of the labelling and other such information. It is the responsibility of the producer to ensure that the label (with their company identifier) is present where relevant. This does not have to mean that the producer labels up themselves as they may wish a manufacturer to do this for them (especially when goods have become their responsibility by virtue of their having imported the goods from abroad). Apart from being in breach of the legislation if the goods are not labelled, this is likely to increase the costs of conforming to the WEEE legislation – particularly in the business to business market sector, over time.

Why is Registering as Producer Important?

Once registered, a producer is eventually given a unique WEEE registration number. This needs to be notified to distributors and through them to the final users. It is through this number that the obligated party for each item of WEEE can be audited. Without such a number, a producer (it is implied) is in breach of the legislation and the final user has no certainty that the producer will pay for WEEE removal and treatment – leaving the final user to pay themselves (especially in the business-to-business sector). The agencies claim that they will encourage other producers to point out free-riders for the agency to chase – in theory becoming a self-policing activity.

Eventually, once they are all issued, those producers without a unique registration number will have to justify why they have not signed up and why they are not in breach of the legislation.

- ◆ Some schemes existed already as they were previously set up as compliance schemes under the packaging legislation – they too calculated that they could pull in more business by expanding their existing offering
- ◆ Some schemes were set up as new concepts by middle-men aiming to marry the needs of the producers with the operations of the logistics and waste industries

The issue with all three sub-groups is that they are doing this with the expectation of a financial return, which can only come at the expense of the producer.

The final group has a very different approach. They have been set up by industry itself as a counter-point to the problems demonstrated in the earlier groups of schemes. Generally, an industry body – usually a trade association, some of which will be well known to the pharmaceutical

world – determined that it wanted a solution that would be optimal for its members and not just financially optimal for the scheme operators. All the schemes in this group are not-for-profit, and all are supported by trade associations – some have several such organisations backing them. The purpose is the same: the best value legal compliance with minimal hassle for the producers.

SO WHAT NEEDS TO BE DONE?

The Individual (Person or Business)

Recognise that you will be paying more for EEE goods because the cost of recovery and recycling is now included, and ensure that you separate the WEEE for separate disposal when you take waste to a DCF.

Dedicated Collection Facility (DCF)

The DCF will be a combination of the civic amenity sites currently in use by the general public and other locations that have chosen to register themselves as a DCF for their own purposes. Some DCFs will be available to the public, others will be specific to a particular company's use.

The Distributor/Retailer

The legislation has confused the issue by muddling the two terms – you may be obliged to take back WEEE over the counter from members of the public, or to join a distributor 'take back scheme', depending on your circumstances. You may, depending on your purchasing policy, also have producer responsibilities.

The Producer

You are obliged to:

- ◆ Join a compliance scheme
- ◆ Pay for the recovery and recycling of WEEE
- ◆ Submit data on the amount of EEE you place on the market in the previous quarter
- ◆ Ensure that all your in-scope products are labelled appropriately
- ◆ Inform any recycling operator that asks, of the treatment issues pertaining to your new EEE

Data Submission

The producers need to submit certain data relating to the weight of EEE (subdivided by category and pre-defined market sector) that their operation placed on the market, quarterly from 1st July 2007 onwards, to their compliance schemes. Only the compliance schemes can submit this data to the relevant official agency. Which official authority applies depends on the location of the compliance scheme that the producer joins. If they join a compliance scheme based in England or Wales, the official authority is the Environment Agency. For Northern Ireland it is the Environment & Heritage Service and for Scotland it is the Scottish Environmental Protection Agency. The shorthand is to refer to 'the Agency'. The Agency is the policing authority for the compliance scheme – and is



responsible to the BERR for ensuring that all parties follow the legal approach – which includes auditing both compliance schemes and producers to check that the data submitted is correct and complete.

WEEE LABELLING

All EEE products being sold now should have specific labelling. This consists of three distinct items:

- ◆ The crossed out wheeled bin symbol – this symbol indicates that the item can be recycled and should not be thrown into normal waste. Of itself, it does not indicate that the item is obligated under WEEE, since it has been in use for many years prior to the introduction of this legislation
- ◆ The date mark – this is an indication of when the product was initially placed on the market. The convention is that a grey or black bar placed in juxtaposition to the crossed out wheeled bin indicates that the product was placed on the market (see Note 1) after 13th August 2005 (being the trigger date for the WEEE legislation across Europe). Alternatively, an actual date of placement on the market can be used
- ◆ The company identifier – this can be the company name or brand name as notified to the agency via the compliance scheme joined by the producer



the release of the unique registration numbers for all registered producers by the agencies – a public register is now available but is not yet complete. This will eventually allow everyone to see whether a producer has registered or not.

CONCLUSION

The collection of WEEE is ongoing, both at DCFs and from the back door of non-households. The volumes thus collected are rising fast, as is awareness about WEEE and what must be done from the perspective of the final user.

The legislation has recently been reviewed and a revised set of regulations was released in December 2007. No significant changes to the obligations of producers has resulted at this time. This is in addition to the revision of the WEEE Directive that is also currently being carried out with consultation across Europe. The expectations are that the legislation will be tightened; that its scope will include a wider range of items; that medical devices may gain a recycling target not previously seen; and that reporting rules may be laid out for national statistics. ◆

*The author can be contacted at
carlk@b2bcompliance.org.uk*

Notes

1. *'Placed on the market' – made available for sale for the first time. Hence, stored complete in a warehouse in China is not available for sale, but (strictly) stored in a warehouse in the UK is available for sale, even if not sold at that point. Refurbished goods are not therefore relabelled as they have already been placed for the first time when they were previously made available for sale.*
2. *'Medical devices' is the title of one of the categories into which WEEE is subdivided. Please note that, unhelpfully, the definition of 'medical devices' in the WEEE Directive and WEEE Regulations is not the same as the definition of 'medical devices' in the Medical Devices Directive. The WEEE legislation defines medical devices in a far wider and more all-embracing manner.*

INFORMATION TO BE PROVIDED ON 'NEW EEE'

The idea is that recyclers need to know if a product will prove dangerous to their personnel or processes if they have not handled it before. They therefore have the right to ask for further details. The right of access to this information pertains only to recycling operators. For this reason, while producers may place such information on their public website, there is no requirement for them to do so. The level of information required is of the order of a one-page schematic detailing the hazardous components (if any), the approximate layout of the product and any issues to be aware of during disassembly or destruction. Many recyclers are already handling sufficient numbers of similar products, so that they are not anticipating the need for such information. There is a 12-month window from when the product is first placed on the market to provide the information. The definition of 'new' is undetermined – a brand new concept product, a new model of the same concept or simply the next off the production line – even the agencies are unclear. Ultimately, this is a health and safety concern whichever definition is used.

WHAT HAS HAPPENED TO DATE?

The first Compliance Period ran from 1st July to 31st December 2007; thereafter it is run by calendar year. Data collection by all schemes has progressed. There are still some issues relating to