



Department of Trade and Industry

Consultation on the Transposition of Articles 5 and 7 of the End-of-Life Vehicles Directive (2000/53/EC)

The End-of-Life Vehicles (Producer Responsibility) Regulations 2004

Issued on 4 February 2004

Responses due by 30 March 2004

URN 04/542

CONTENTS		Page
<u>Introduction:</u>	Purpose of the consultation; Contact points; deadline for responses	3
<u>Background:</u>	The End-of-Life Vehicles Directive	5
<u>Consultation Document:</u>		
Main text	Explaining and seeking comments on draft Regulations to transpose Articles 5 and 7 of the Directive	7
Appendix A	Partial Regulatory Impact Assessment	19
Appendix B	The draft transposing Regulations	43
Annex	Cabinet Office consultation criteria	77

URN 04/542

INTRODUCTION

PURPOSE OF THE CONSULTATION

- 1.1 This consultation document seeks your views on a draft Statutory Instrument, entitled:
- The End-of-Life Vehicles (Producer Responsibility) Regulations 2004
- which is to be made under section 2(2) of the European Communities Act 1972.
- 1.2 The proposals in this consultation document are made by the UK Government and the devolved administrations for Scotland, Wales and Northern Ireland. The measures are presented for consultation as a single Statutory Instrument. When approved, these Regulations will transpose into law certain provisions of Directive 2000/53/EC on End-of-Life Vehicles. As some aspects relate to devolved matters, separate Regulations may be made for Scotland, Wales or Northern Ireland.

RESPONSES

- 1.3 Responses should be made to:
- By e-mail: peter.cottrell@dti.gov.uk
- By post: Peter Cottrell
Technological Innovation and Sustainable Development
Department of Trade and Industry
Bay 425 (Red Zone)
151 Buckingham Palace Road
London
SW1W 9SS

CLOSING DATE

- 1.4 Responses must be received by 30 March 2004. The Department recognises that this allows a shorter than normal period for consultation. The system being proposed in the draft Regulations has been the subject of a lengthy consultation with the key industry sectors involved.

OUTCOME

- 1.5 It is our intention to publish the outcome of this consultation shortly after the closing date for the responses.

CONFIDENTIALITY

- 1.6 Responses to this consultation document may be made publicly available in whole or in part, at the Department's discretion. If, in responding, you do not wish all or part of your response (including your identity) to be made public, you should state in the response which parts you wish us to keep confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquirers from outside the UK, or published by any means, including on the internet.

CONSULTATION DOCUMENT AVAILABILITY

- 1.7 The consultation document is available electronically on the DTI website at www.dti.gov.uk/consultations or www.dti.gov.uk/sustainability/pub.htm and may also be obtained in printed form on request from Peter Cottrell, whose contact details are given in paragraphs 1.3 and 1.8.

HELP WITH QUERIES

- 1.8 If you would like help with queries or further information about the consultation, please contact Peter Cottrell, Department of Trade and Industry, Bay 425 (Red Zone), 151 Buckingham Palace Road, London SW1W 9SS; e-mail: peter.cottrell@dti.gov.uk; telephone: 0207 215 1330; fax: 0207 215 5860.

BACKGROUND TO THE DRAFT REGULATIONS

2.1 The End of Life Vehicles (ELV) Directive (2000/53/EC) came into force on 21 October 2000. Member States should have transposed the Directive into national law by 21 April 2002. Copies of the Directive are available on www.dti.gov.uk

2.2 The Directive lays down measures which aim, as a first priority, at the prevention of waste from vehicles and, in addition, at the reuse, recycling and other forms of recovery of end-of-life vehicles and their components so as to reduce the disposal of waste, as well as at the improvement in the environmental performance of all the economic operators involved in the life cycle of vehicles and especially the operators directly involved in the treatment of end-of-life vehicles. In particular it:

- restricts the use of certain heavy metals in the manufacture of new vehicles;
- introduces a Certificate of Destruction, which triggers the removal of a vehicle from the national vehicle register;
- requires that certain components are marked to aid recovery and recycling, and that information is provided to facilitate dismantling;
- requires the establishment of adequate systems for the collection of ELVs, and specifies the site, storage and operating standards that must be met by businesses permitted to treat ELVs;
- requires that ELVs can only be scrapped ('treated') by authorised facilities, which must meet specified environmental treatment standards.

2.3 These provisions were transposed into national law by The End-of-Life Vehicles Regulations 2003 (Statutory Instrument 2003/2635) which came into effect on 3 November 2003, and by equivalent regulations in Scotland and Northern Ireland.

2.4 The Directive also:

- states that owners must be able to have their complete ELVs accepted by collection systems free of charge, even when they have a negative value, from 1 January 2007 at the latest (earlier in respect of vehicles put on the market on or after 1 July 2002 – a provision which was also transposed by the Statutory Instrument referred to above);

- requires producers (vehicle manufacturers or professional importers) to pay 'all or a significant part' of the costs of take back and treatment for complete ELVs;
- sets rising re-use, recycling and recovery targets which must be achieved by economic operators by January 2006 and 2015;

2.5 It is these latter provisions which are the subject of the draft Regulations at Annex 1 to this consultation document.

2.6 Certain other provisions of the Directive have yet to be finalised under the European Commission-led Committee procedure provided for in the Directive.

THE CONSULTATION DOCUMENT

The draft Regulations are arranged in the following Parts:

- Part I GENERAL
 - Part II APPLICATION
 - Part III REGISTRATION
 - Part IV TREATMENT NETWORKS
 - Part V RECOVERY AND RECYCLING TARGETS
 - Part VI POWERS OF THE SECRETARY OF STATE
 - Part VII OFFENCES
 - Part VIII MISCELLANEOUS
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- Schedule 1 Information to be included in the application for producer registration
 - Schedule 2 Criteria the Secretary of State may take into account in reaching a decision under regulation 8(3)(c)
 - Schedule 3 Criteria the Secretary of State may take into account in reaching a decision under regulation 15(2)
 - Schedule 4 Requirements relating to a producer's network of authorised treatment facilities
 - Schedule 5 Information to be contained in the certificate of compliance
 - Schedule 6 The powers of the Secretary of State
 - Schedule 7 Public Register

NB The paragraph numbers in this consultation document do not correspond directly to the numbering of the draft Regulations.

There is no need to restrict your comments to the specific questions which are asked at various places in the text of this consultation document.

Part 1 GENERAL

1.1 This section of the draft Regulations gives their title, and defines a number of terms used. The latter reflect the definitions appearing in the ELV Directive itself.

1.2 “Vehicle” in this context means one designated as category M₁ or N₁ as defined in Directive 70/156/EEC (the Type Approval Directive), broadly speaking, passenger cars and light vans, and three wheel motor vehicles, as defined in Directive 92/61/EEC; and an “end-of-life vehicle” means a vehicle which is waste within the meaning of Article 1(a) of Directive 75/442/EEC (the Waste Framework Directive).

1.3 “Producer” means the vehicle manufacturer or the professional importer of a vehicle into a member State.

Part II APPLICATION

2.1 This section explains that the Regulations apply where appropriate to vehicles and to end-of-life vehicles, irrespective of the latter being equipped with components other than those present at the time the vehicle was first put on the market.

2.2 It also specifies those provisions that do not apply to special purpose vehicles and three-wheel motor vehicles.

Part III REGISTRATION

3.1 Since the adoption of the ELV Directive, the Government has considered a number of approaches to implementing Articles 5 and 7, which require the take-back, treatment and recovery of ELVs. There has been one public consultation (August 2001) and prolonged discussion with the industry sectors most directly affected by the Directive. The Government proposes to adopt an “own marque” approach to implementation, and this is reflected in the draft transposing Regulations. Under this approach, producers will be required to take responsibility for the vehicles they place on the market, when they are brought back as ELVs into producers’ networks of authorised treatment facilities (ATFs).

3.2 Part III of the Regulations explains that producers must apply in writing to the Regulator by 31 December 2004 for registration and, when doing so, must declare responsibility for the vehicles which they have put on the market prior to the date of their application and, if known, for the vehicles which they

expect to put on the market after that date. When registration is granted by the Regulator, such declarations will stand until such time as the producer informs the Regulator that his circumstances in respect of responsibility for those vehicles has changed.

3.3 It is intended that the Regulator in relation to these Regulations will be the Secretary of State for Trade and Industry except where otherwise indicated (e.g the Environment Agencies are expected to monitor compliance with the recovery and recycling targets).

3.4 Schedule 1 sets down the information that must be provided in any application for producer registration. This includes a clear description of the vehicles for which the producer declares responsibility. Such a description may include references to the make, model, or vehicle identification number (VIN) of the relevant vehicles. Producers declaring responsibility by quoting VINs must make further such declarations no later than 1 month after the end of each succeeding period of 6 calendar months, in respect of the vehicles they have put on the market during that period.

3.5 The Regulator will confirm receipt of a producer's application for registration in respect of applications received on or before 31 December 2004, within 14 days of that receipt, and within 28 days of receipt of all subsequent declarations. All such applications will be treated as granted, unless the Regulator informs the applicant otherwise, by 31 March 2005, in respect of applications received on or before 31 December 2004, and within 28 days of receipt of all other applications.

3.6 The Regulator may ascribe to a producer responsibility for vehicles for which no other producer has declared responsibility. This will be done in writing, within 14 days of the decision having been taken, and, when so writing, the Regulator will set down the reasons for the decision. The Regulator may revoke or amend that decision in the light of representations received from the producer to whom responsibility has been ascribed by the Regulator. If the Regulator does not ascribe responsibility for vehicles for which no producer has declared responsibility, such vehicles will be subject to the Agreement referred to in Regulation 31 (see paragraph 8.1 of this consultation document) which the Secretary of State may enter into with one or more producers or an organisation or organisations representing the interests of relevant producers.

3.7 If a producer transfers his business to another producer, he will remain responsible for the vehicles for which he has declared responsibility, unless he can demonstrate that the person to whom the business has been transferred has agreed to take over responsibility for the obligations in respect of those vehicles.

3.8 We would welcome your comments on our proposals for producer registration, declaration of responsibility, and the Regulator's ascribing of responsibility. (A question regarding the direction of unascribed

vehicles into the Agreements referred to in Regulation 31 is asked at paragraph 8.2).

Part IV TREATMENT NETWORKS

Producer responsibility for free take-back and treatment

4.1 This section of the draft Regulations sets down the obligations to be placed on a producer in respect of his providing an adequate network of authorised treatment facilities (ATFs)¹ to provide free take back and treatment of vehicles for which he has declared responsibility, or for which he has been ascribed responsibility, when they become ELVs. Although the Government announced on 21 June 2002 that producers would not become responsible for providing free take back of all complete ELVs until 2007, in common with producers in the majority of other EU member States, the ELV Directive requires weight-based recovery and recycling targets to be achieved in 2006. The Government is therefore proposing that producers' networks of ATFs must be in place ahead of 2006, to ensure that the recovery and recycling targets for ELVs are met in that year.

4.2 By 1 July 2005, accordingly, a producer must submit a plan which assures the Regulator that he has established a network of ATFs which is adequate to deal with (i.e. take back and treat) all the vehicles for which he has responsibility, and which are likely to become ELVs during 2006.

Treatment capacity

4.3 A producer's plan must indicate the treatment capacity existing at each of the ATFs with which he has established a contractual relationship to provide free take back and treatment from 2007. A network's collective capacity must be sufficient to satisfy the Regulator that it is capable of depolluting and dismantling all the ELVs for which the producer has declared responsibility, and which are likely to be brought back to that producer's network during 2006 and annually thereafter.

4.4 In assessing the adequacy of a producer's capacity plan, the Regulator will take into account an estimate of the average time needed by an ATF to receive an ELV, issue a Certificate of Destruction, depollute, dismantle and otherwise deal with an ELV. Actual treatment times will depend on a number of factors, including the age, condition, make and model of the vehicle, the depollution equipment used, and the efficiency of the operator. But the two latest industry estimates that the Department has are (a) 45 minutes, and (b) 1 hour 15 minutes. The Department believes that it would not be unreasonable therefore to assume a 1-hour average process time per ELV. Defra/DTI's "Depollution Guidance for ATFs", which was based on using

¹ authorised treatment facility -- any establishment or undertaking carrying out treatment operations and holding a site licence that meets the requirements of Part VII and Schedule 5 to the End-of-Life Regulations 2003, and the equivalent Regulations in Scotland and Northern Ireland.

custom-built equipment (a “depollution rig”), indicates that an ELV can be drained of fluids in 20-30 minutes, and a doubling of that time for associated activity is we think about right. (That Guidance is available electronically at www.dti.gov.uk/sustainability/pub.htm or in printed form from Peter Cottrell, whose contact details are at paragraphs 1.3 and 1.8 in this consultation document).

4.5 The Department would welcome your views on these assumptions about depollution times and the associated activities. If you do not agree with them, what times do you think should be assumed?

Accessibility

4.6 A producer’s plan must also indicate the number, and geographical location, of ATFs in a producer’s network. A producer’s plan must satisfy the criterion that, on average, last owners or holders of the ELVs for which that producer has responsibility will not need to travel more than 10 miles to deliver ELVs into the producer’s network of ATFs. To arrive at the 10 mile criterion means dividing, by the number of journeys undertaken, the distance expected to be travelled collectively by all last owners or holders of a producer’s ELVs to deliver their vehicles into that producer’s network of ATFs. This calculation should result in a quotient of no more than 10 miles. In the interests of efficiency, and to maximise throughput, producers will no doubt wish to position their contracted ATFs in locations which reflect the expected location and numbers of the ELVs arising. Taking the land mass of the UK, a 10-mile criterion implies around 370 ATFs within a producer’s network. However, a producer not wishing to contract with such a number of facilities, on the grounds that his expected number of ELVs would require very limited depollution capacity, may choose to adopt alternative approaches, provided the underlying convenience for last owners or holders is not compromised. Some producers with limited annual ELV numbers may wish, for example, to undertake to collect ELVs from last owners, and to transport to an ATF in their contracted network.

4.7 Under these proposals, a producer must also ensure that no individual last owner needs to travel more than a maximum distance to deliver his ELV, or have it delivered, to an ATF within his network. One option would be to set this at 50 miles. We expect that producers will wish to offer a collection service, or some similar approach, in remotely populated areas, rather than set up ATFs with low levels of throughput.

4.8 Another possible approach would be to specify ATFs in relation to population density, such that densely populated areas would require more ATFs than sparsely populated. This would not impose a distance limit per se and could for example use post codes – the Department understands that many producers have access to postcode information relating to current owners of their marques. Such data was used when this issue was researched by the vehicle manufacturers’ CARE (Consortium on Automotive

Recycling) Group in 2001. This showed that, with a maximum 20-minute drive time, 320 treatment facilities could service 90% of the aged vehicle parc.

4.9 The “convenience criterion” was something on which the Department consulted in August 2001. That original consultation paper contained the passage:

” Ease of access for the last owner is a significant issue which needs to be properly addressed. Our initial view is that it might be reasonable to require the last owner to drive 10 miles to deliver a vehicle, but not 50 miles. This may need further consideration, especially in remote areas.”

Very few comments were received on this issue at the time, but those that did reply said that 10 miles did not appear to be unreasonable.

4.10 In proposing a 10 mile maximum average, and a 50 mile absolute maximum, we are seeking to balance efficiency with convenience. In Germany, where an own marque system operates, the legislation states “.....the network is sufficiently comprehensive if the distance from the residence of the last registered owner and the collection facility or an authorised dismantling facility designated by the manufacturer for this purpose does not exceed 50 kms”. While on the one hand it is possible that producers may prefer to minimise the number of ATFs with whom they contract, to reduce administrative costs, and thus maintain a network consisting of a few very large ATFs, this does not appear to the Government to provide a network adequate to avoid placing an undue burden on last owners and to deter what may be a greater risk of abandonment. It is also possible that last owners would be more prepared to forego their entitlement to free take-back, by paying ATFs to accept their ELVs because the contracted ATFs for those marques were distant and inconvenient.

4.11 We would welcome your comments on our proposals for determining reasonable convenience for the last owner of holder of an ELV.

4.12 The Regulator may approve a network plan, or may require amendments to be made to it. A producer may ask the Regulator to agree to make a change to his approved network should it seem to him that the network contains excess capacity, in the light of numbers of ELVs being received into it, or insufficient capacity to accommodate a predicted increase in ELV numbers. Such requests for revisions must be made not less than 6 months before the year in which the producer wants them to take effect.

4.13 There is nothing in the Regulations to prevent an ATF being part of more than one producer’s network, nor to prevent a producer sub-contracting delivery of his network and capacity obligations to a service provider – although the statutory obligations remain with the producer.

4.14 We would welcome your comments on our proposals for the regulation of producers' capacity and accessibility plans.

Role of Authorised Treatment Facilities (ATFs)

4.15 It is likely that not all the 2,000 to 2,500 ELV treatment facilities currently operating will become ATFs. The latest estimate from the Environment Agency is that the number of treatment facilities available in 2006/07 will be around 1,750. A number of these will enter into contractual relationships with producers to provide the take-back and treatment service for the producers' relevant marques. Where ATFs have such a contract, they will have negotiated its terms with the relevant producer(s). The details of such contracts will of course be for the parties concerned, but the Department would expect negotiations to take into account the likely cost of treatment (depollution, dismantling, issue of the Certificate of Destruction) and the projected income from reused elements and materials recovered.

4.16 Under the proposals in the draft Regulations, ATFs that do not enter into contracts with producers may continue to take in ELVs. Some of these will have a net positive value – treatment costs will be outweighed by income from parts and recovered material. Where “uncontracted” ATFs accept negative value ELVs, however, they will be expected to cover the free take-back and treatment costs themselves. They will also be required to meet the recovery/recycling targets and will have to ensure, therefore, that the material from these ELVs is sent for recycling, and that they can obtain evidence of compliance with the targets to provide to the Regulator (see Part V of the Consultation Paper below). These obligations will also apply to “contracted” ATFs who decide to accept ELVs of a marque for which they are not contracted.

4.17 Do you think that the Government should require ATFs without a producer contract to provide take-back and treatment on the basis described above?

Part V RECOVERY AND RECYCLING TARGETS

5.1 This section of the Regulations sets down the obligations which fall upon producers in respect of achieving the recovery and recycling targets in the Directive. The same obligations fall upon authorised treatment facilities, should they decide to take back ELVs for which they do not have a contractual obligation on behalf of a producer.

5.2 Article 7.2 of the ELV Directive states:

Member States shall take the necessary measures to ensure that the following targets are attained by economic operators:

(a) no later than 1 January 2006, for all end-of-life vehicles, the reuse and recovery shall be increased to a minimum of 85% by average weight per vehicle and year. Within the same time limit the reuse and recycling shall be increased to a minimum of 80% by an average weight per vehicle and year;

for vehicles produced before 1 January 1980, Member States may lay down lower targets, but not lower than 70% for reuse and recycling. Member States making use of this subparagraph shall inform the Commission and the other Member States of the reasons therefore:

(b) no later than 1 January 2015, for all end-of-life vehicles, the reuse and recovery shall be increased to a minimum of 95% by an average weight per vehicle and year. Within the same time limit, the reuse and recycling shall be increased to a minimum of 85% by an average weight per vehicle and year.

By 31 December 2005 at the latest the European Parliament and the Council shall re-examine the targets referred to in paragraph (b) on the basis of a report of the Commission, accompanied by a proposal. In its report the Commission shall take into account the development of the material composition of vehicles and any other relevant environmental aspects related to vehicles.

5.3 The wording of this passage of the Directive is somewhat ambiguous. Discussion with the European Commission and other member States has resulted in our deciding to interpret the application of the recovery and recycling targets to the total weight of ELVs scrapped in 2006, and each succeeding calendar year, rather than to seek to recover the targeted percentage from each ELV scrapped from 1 January 2006 onwards. The latter approach would be disproportionately burdensome for all economic operators in the market, but also in terms of monitoring and enforcement, and would not increase the overall diversion of waste from landfill.

5.4 We would welcome your comments on this interpretation.

5.5 The Government does not think it sensible to share the recovery and recycling targets among a wide range of “economic operators” – defined in the Directive as meaning producers, distributors, collectors, motor vehicle insurance companies, dismantlers, shredders, recoverers, recyclers and other ELV treatment operators. Spreading the targets across a range of economic operators, as allowed under the Directive, would involve administrative complexity, both in terms of apportioning responsibilities and in terms of monitoring and enforcement. The latter in particular would not be insignificant given the number and range of economic operators involved in the new and used vehicle market and in the market dealing with ELVs in the UK. There are relatively few vehicle manufacturers and professional importers compared to other operators in the market. Given too that the UK already achieves levels of re-use and recovery of ELVs estimated to be in the region of 77-80 per cent, the ELV Directive requires a relatively small increase in the total amount of material from ELVs to be recovered to achieve the 2006

target. From around 2 million ELVs annually in the UK the 85 per cent target implies an additional tonnage in the region of 87,000–166,000 tonnes. It is doubtful if such a volume of material merits spreading the targets across a range of economic operators

5.6 Producers must recover 85% of the weight of ELVs for which they have declared responsibility, or for which they have been ascribed responsibility, and which have been taken back by ATFs in their contracted networks during calendar year 2006, and each year thereafter, until 2015, when the target becomes 95%.

5.7 It does not seem appropriate to require a producer to finance the take back and recovery requirements for vehicles of his marque that are not delivered into his network, when that network is compliant in both capacity and convenience terms with the requirements of the Regulations, and has been duly approved by the Regulator. If an ATF accepts a vehicle of a marque for which it is not contracted to provide free take-back, it is likely that one of three things is happening:

- the ELV has sufficient value for the ATF to cover the treatment and recovery costs resulting from the requirements of the Regulations;
- the last holder/owner has foregone his entitlement to free take back at a producer's ATF and willingly paid the ATF for his take-back services; or
- the ATF has paid the last holder/owner for his ELV.

5.8 In all these cases, it does not seem appropriate to require an own marque producer to be responsible for the financing of takeback and the recovery targets of the Directive. This is because in the first case the ATF has made an informed and free market decision to accept the ELV – it has no obligation to accept any ELV; in the second case the last holder/owner has willingly paid for the vehicle to be accepted by an ATF – even though he had the option of taking advantage of free takeback via the own marque network; and in the third case it would undermine the own marque network and lead to inefficiencies and cost increases for own marque producers if they were obliged to finance the costs of ATFs with whom they did not have a contractual relationship.

5.9 The third case may require further elaboration. If producers were required to finance the costs of ELVs which did not come back through their network, then this would undermine the contracting arrangements they have made for their own network. This is because an ATF could pay the last holder/owner for his ELV and recover these costs through the own marque producer via his obligation. Placing an obligation on a party unable to exercise any control over the potential costs of that obligation is likely to lead to inefficient and costly compliance.

5.10 We would welcome your comments on our proposals for placing the recovery and recycling obligations:

- (a) on producers, in respect of the ELVs for which they have declared responsibility and which are taken back at their network of ATFs for treatment; and
- (b) on ATFs in respect of the ELVs they have accepted for treatment and for which they do not have a producer's contract.

5.11 It is expected that the Environment Agency, in England and Wales, the Scottish Environment Protection Agency, in Scotland, and the Department of the Environment, in Northern Ireland, will enforce this part of the Regulations.

5.12 By 1 March each year, beginning in 2007, the parties identified at 5.10 (a) and (b) above must provide to the appropriate Agency evidence that they have achieved the necessary tonnages of recovery and recycling of the weight of the vehicles for which they have responsibility and which were accepted into their ATF network during the course of the previous calendar year. The Certificate of Compliance, at Schedule 5 to the draft Regulations, sets down the form in which a producer must declare his compliance with the recovery and recycling obligations. The form of evidence itself has yet to be decided – see 5.14 below.

5.13 Article 7 of the ELV Directive also says:

The Commission shall [.....] establish the detailed rules necessary to control compliance of member States with the targets [.....]. In doing so the Commission shall take into account all relevant factors, inter alia the availability of data and the issue of exports and imports of end-of-life vehicles. The Commission shall take this measure not later than 21 October 2002.

5.14 The European Commission has still to finalise its proposals in this regard. The UK, along with a number of other member States, has argued for a system which allows for a specific recovery and recycling rate for the metallic fraction of the total ELV waste stream to be assumed. In this way, monitoring and enforcement could be concentrated on the very much smaller quantities of non-metallic ELV materials, such as glass, plastics, rubber, fluids and textiles which have not traditionally been recovered from this waste stream in any significant amounts. In the UK's view, to track every movement of ferrous and non-ferrous metallic waste from ELVs to recyclers would be burdensome and unnecessary. The latest proposal from the Commission recognises this approach as being appropriate for those member States which wish to adopt it, provided that detailed analysis of the metallic fraction appearing in the ELV waste stream arising in the opting member State is presented to the Commission in justification of the rate to be assumed. Such a justification would need to be reviewed every few years, to reflect the changing composition of vehicles. According to this latest proposal from the Commission, the actual recovery and recycling rates of non-metallic materials "must be accounted for on the basis of declarations from the receiving recycling or recovery or collection company". The Commission's proposal

also allows a choice of methods for establishing the weights of ELVs; the Department is in discussion with vehicle manufacturers about the creation of a database, linked to DVLA, from which cumulative “own marque” recovery and recycling tonnage obligations, triggered by the issue of Certificates of Destruction, can be calculated.

5.15 We would welcome your views on these proposed arrangements.

Part VI THE SECRETARY OF STATE’S POWERS

6.1 This section of the Regulations sets down the powers and duties of the Secretary of State in monitoring producers’ registration and compliance with their producer responsibility obligations, and in maintaining a public register of producers who register in accordance with their producer responsibility obligations.

6.2 We would welcome your comments on the proposed powers and duties.

Part VII OFFENCES

7.1 This section of the Regulations details the offences of which a person may be guilty, and specifies the penalties which would apply on conviction. Persons found guilty of an offence under these Regulations will be liable on summary conviction to a fine not exceeding the statutory maximum (£5,000), or, on conviction on indictment, to a fine (unlimited).

7.2 We would welcome your comments on this section.

Part VIII MISCELLANEOUS

8.1 This section of the Regulations gives the Secretary of State powers to enter into Agreements with producers in order to achieve certain objectives of the Directive, including the prevention of waste from vehicles, and the reuse, recycling and recovery of ELVs. It is envisaged that such an Agreement will, in the first instance, be entered into by the Secretary of State and producers in order to ensure that last owners or holders of ELVs which cannot be ascribed to a producer may secure their entitlement to free take-back, from January 2007. Other matters may also be covered.

8.2 We would welcome your comments on the proposal for an Agreement of the nature described above for allocating to producers responsibility for so-called “orphan” vehicles.

8.3 This section also amends the End-of-Life Vehicles Regulations 2003, by removing three-wheel motor vehicles from their scope, and by rescinding, from 1 January 2007, the system of take-back for vehicles put on the market

on or after 1 July 2002. The latter vehicles will become subject to the requirements of the End-of-Life Vehicles (Producer Responsibility) Regulations 2004 from that date.

8.4 We would welcome your views on the timing and method by which vehicles put on the market on or after 1 July 2002 will become subject to this second set of ELV Regulations.

Schedules to the Regulations

9.1 The following are Schedules to the Regulations:

- Schedule 1 Information to be included in the application for producer registration
- Schedule 2 Criteria the Secretary of State may take into account in reaching a decision under regulation 8(3)(c)
- Schedule 3 Criteria the Secretary of State may take into account in reaching a decision under regulation 15(2)
- Schedule 4 Requirements relating to a producer's network of authorised treatment facilities
- Schedule 5 Information to be contained in the certificate of compliance
- Schedule 6 The powers of the Secretary of State
- Schedule 7 Public Register

9.2 We would welcome your comments on the coverage and content of all these Schedules to the Regulations.

Appendix A: Partial Regulatory Impact Assessment

We would welcome your comments on the cost and benefit estimates outlined in this partial RIA at Appendix A. If you do not agree with the estimates, please provide as much detail as possible in support of your own estimates.

Appendix B: Draft transposing regulations

We would welcome your comments on the draft transposing regulations at Appendix B.

APPENDIX A

PARTIAL REGULATORY IMPACT ASSESSMENT (RIA) FOR THE DEPARTMENT OF TRADE AND INDUSTRY'S DRAFT STATUTORY INSTRUMENT TRANSPOSING ARTICLES 5 AND 7 OF DIRECTIVE 2000/53/EC² OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON END OF LIFE VEHICLES (THE 'ELV' DIRECTIVE) IN THE UK

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

1. This partial RIA discusses the potential costs, benefits and risks which could affect businesses, charities and the voluntary sector in the UK as a result of the Department of Trade and Industry's (DTI's) draft Statutory Instrument (SI) implementing Articles 5 and 7 of Directive 2000/53/EC of the European Parliament and of the Council on End of Life Vehicles (ELVs) in the UK.

2. Specifically the draft SI deals with: producers and their obligations in respect of vehicles placed on the market in the UK when they arise as ELVs in the UK (Article 5 of the ELV Directive); the network of takeback and collection facilities for ELVs in the UK (Article 5 of the ELV Directive); and the achievement of the reuse and recovery targets of the Directive (Article 7 of the ELV Directive).

Background

3. End of Life Vehicles (ELVs) are a priority waste stream of the European Community,³ because of the growing numbers of vehicles that are put on the market and arise as waste in the Community, and because vehicles contain a number of hazardous substances which, following disposal, can have a disproportionate⁴ negative impact on the environment and on human health.

² And as amended by the Commission Decision of 19 February 2002 (2002/15/EC) and the Commission Decision of 27 June 2002 (2002/525/EC).

³ The Community programme of policy and action in relation to the environment and sustainable development ("Fifth Action Programme") contains an entire chapter dedicated to waste management issues, in which ELVs are mentioned as a 'target' area.

⁴ In relation to the volume of waste discarded and subsequently disposed.

4. The End of Life Vehicles Directive aims to reduce the amount of waste from end of life vehicles. It introduces a number of measures in order “..to promote the prevention of waste..” from vehicles, and requires Member States to ensure that ELVs are treated to a set of standards. In addition it sets rising reuse, recycling and recovery targets⁵ for material from ELVs, and aims at improving the environmental performance of economic operators in the vehicle market and especially those directly involved with ELVs.

5. The ELV Directive is an environmental Directive⁶ based on the principle of (extended) producer responsibility ((E)PR)).⁷ (E)PR is an attempt to build on the more general polluter pays principle, under the premise that as producers design and manufacture products they are best placed to determine product lifespan and facilitate effective recovery and disposal at end of life.⁸

6. The ELV Directive is the first Community Directive explicitly to employ the principle of (E)PR.⁹ In this context it is a complex Directive, with a range of exemptions, and Member States are able to transpose the Directive into national legislation via the principle of subsidiarity.¹⁰

7. The ELV Directive allows Member States a degree of flexibility in terms of the timing of imposition of full (E)PR in relation to all vehicles put on their national markets.¹¹ On 21 June 2002 the Minister of State for Energy and Construction announced that the UK would, like the majority of Member States, not introduce full EPR for vehicles put on the market prior to 1 July 2002 until 1 January 2007. This announcement was made in a written

⁵ But not a specific target for re-use.

⁶ Specifically it is ‘an Article 175(1) Directive’. Article 175 of the Treaty establishing the European Community states that Community Policy on the environment should aim at a high level of protection taking into account the diversity of situations in the various regions of the Community.

⁷ Extended Producer Responsibility (EPR) is defined by the OECD as “..an environmental policy approach in which a producer’s responsibility for a product is extended to the post-consumer stage of a product’s life cycle.” See *Extended Producer Responsibility: A Guidance Manual for Governments*, OECD (2001).

⁸ See, for example, Commission of the European Communities, *Proposal for a Council Directive on End of Life Vehicles – Explanatory Memorandum* (COM (97) 358 final), and Commission of the European Communities, *Proposal for a Directive of the European Parliament and of the Council on Waste Electrical and Electronic Equipment* (COM (2000) 347 final).

⁹ The *Packaging and Packaging Waste Directive (94/62/EC)* is not an ‘(Extended) Producer Responsibility Directive’ but is implemented in the vast majority of member States through a range of (E)PR approaches.

¹⁰ This means that Member States have a degree of discretion in establishing national systems to implement the ELV Directive provided they ensure that the Directive’s requirements are achieved.

¹¹ See *Article 12 – Entry into Force* of the ELV Directive. Specifically, the Directive says that producers shall meet all, or a significant part of, the costs of free take-back of ELVs from last holders/owners for vehicles put on the market from 1 July 2002, from that date, and from 1 January 2007 for vehicles put on the market prior to 1 July 2002.

Parliamentary Question and was supported by a full RIA produced by the Department of Trade and Industry (DTI).

8. On 8 October 2003 the Minister of State for Energy, E-Commerce and Postal Services made a Statutory Instrument (SI) in relation to transposing Articles 4,5 (in part), 6,8,9, Annex I, and Annex II of the ELV Directive in the UK.¹² This SI came into force on 3 November 2003, and deals with restrictions on the use of heavy metals in new vehicles and components, the introduction of a Certificate of Destruction (CoD) for ELVs, the 'take-back' arrangements for *new* vehicles (i.e. vehicles put on the market from 1 July 2002) when they arise as ELVs,¹³ the licensing requirements for sites that store and treat ELVs and the standards required for that storage and treatment, and requirements relating to information with respect to the coding of components, the design of vehicles and the dismantling of ELVs. The full RIA supporting this SI was placed in the libraries of both Houses and is available on the DTI web-site.¹⁴

9. The draft Statutory Instrument (SI) which is the subject of the DTI's 3rd consultation exercise on implementing the ELV Directive in the UK, and which is the subject of this partial RIA, deals with the remaining Articles (in part and in whole) of the ELV Directive that need to be transposed into UK legislation to complete transposition of the Directive in the UK.

10. The draft SI sets out a framework within which producers are to be responsible for the takeback, treatment and recovery of vehicles they have declared (or are assigned) responsibility for. To discharge this obligation, producers will need to contract with a network of Authorised Treatment Facilities (ATFs), and with the reprocessing industry. An ATF can accept delivery of any vehicle, but producers are obligated only for the vehicles they are responsible for which are delivered into their network of ATFs.

Risk Assessment

11. The obligations on producers under the draft SI are designed to enable the UK to meet the environmental benefits of the Directive at least cost to UK businesses. The requirements for national networks of facilities for free take-back and collection of ELVs are aimed at balancing convenience for last holders/owners when disposing of their vehicles, with an efficient level of capacity to deal with the number of vehicles that arise as ELVs annually in the UK. Risks from alternative implementation strategies can be seen in terms of

¹² Statutory Instruments 2003 No.2635 Environmental Protection – *The End-of-Life Vehicles Regulations 2003*, HMSO (2003).

¹³ Vehicle manufacturers and importers are responsible for the takeback and treatment of vehicles they have placed on the market from 1 July 2002 if they have no value when arising as ELVs. They may discharge this obligation by contracting with authorised treatment facilities (ATFs) or by entering into arrangements with the motor insurance industry and/or vehicle salvage operators directly.

¹⁴ Available at www.dti.gov.uk/environment/consultations/elvira.pdf

the potential for greater costs of compliance, risks of the stockpiling of ELVs, and the possibility of an increase in the propensity on the part of some last holders/owners to attempt to abandon their vehicles.¹⁵

12. The requirements on ATFs with respect to the costs of treatment and the costs of achieving reuse and recovery targets can be seen as an attempt to create as free a market as possible in the ELV sector following transposition of the Directive. ATFs contracted to producers will undertake treatment, and possibly facilitate recovery, on their behalf.¹⁶ If an ATF (contracted or uncontracted) willingly takes an ELV out of a producer's network it is presumed it is doing this because generally the ELV has a (net) positive value. To require the producer to finance the treatment and recovery of an ELV taken out of his network could undermine the basis of a producer national network, and would run the risk that there would be a 'bidding war' for ELVs which would effectively be underwritten by a producer obligation.¹⁷

13. The requirement to increase the reuse and recovery of ELVs to 85 per cent will reduce the risks of harm to the environment and human health from the current disposal levels of materials from ELVs, and reduce the risks to resource productivity from the loss of potentially recoverable resources. Potential risks are generally considered in terms of negative impacts on soil, water and air quality from the disposal of waste containing hazardous substances.¹⁸

OPTIONS

14. This partial RIA outlines the economic rationale underpinning the draft SI in relation to alternative options that could have been followed.

¹⁵ If, for example, it becomes excessively burdensome for last owners/holders to deliver their ELVs. But, it should be remembered that abandoning a vehicle is a criminal offence, and that the vast majority of abandoned vehicles are unregistered and so are unlikely to be disposed of legally no matter what the size of network available.

¹⁶ Of course ATFs can bid to win (or take over) the contracts of other ATFs.

¹⁷ For example, if a producer has the obligation to finance treatment and recovery of all ELVs of his marque/brand, then although a last holder/owner is entitled to free take-back via a producer's ATF network, an ATF could offer the last holder/owner a bounty for his ELV in the knowledge that whatever money is given to the last holder/owner, in the end, will be re-couped via the producer obligation. This may lead to abuse, and could defeat the object of a producer establishing a national network to discharge his obligations in an efficient manner. Alternatively, the draft SI could say that it is illegal for an ATF to accept an ELV for which it does not have a contract, but this seems excessive.

¹⁸ As existing vehicles contain a range of hazardous substances, the landfilling or incineration of Automotive Shredder Residue (ASR) represents the disposal of hazardous waste. See Commission of the European Communities, *Proposal for a Council Directive on End of Life Vehicles – Explanatory Memorandum* (COM (97) 358 final) which says that ASR “..represents up to 10 per cent of the total amount of hazardous waste generated yearly in the EU.”

15. Options that have been considered to complete transposition of the ELV Directive into UK law include: Option 1 – an early attempt¹⁹ at an ‘own marque’ system; Option 2 – an early attempt at an evidence notes system; Option 3 – a hybrid of Options 1 and 2; Option 1a – an ‘own marque’ system involving the setting and benchmarking of costs; Option 4 – a system placing obligations for ‘positive value’ ELVs on dismantlers and obligations for ‘negative value’ ELVs on shredders; Option 5 – a fund system along the lines of Auto Recycling Netherland (ARN) in the Netherlands; and a Producer Choice Option (PCO) – a system enabling producers to discharge their obligations via either a market share route or an ‘own marque’ route.

COSTS AND BENEFITS

Business sectors affected

16. The business sectors potentially affected by the draft SI are motor vehicle manufacturers and professional importers (SIC²⁰ 3410), motor vehicle component manufacturers (SIC 3430), salvage operators, dismantlers, shredders, reprocessors, and secondary metal merchants (SIC 2710, 3720, SIC 5157). There are 36 vehicle manufacturers selling in the UK and 9 vehicle producers operating in the UK. There are some 7,000 vehicle component manufacturers selling in the UK of which 90 per cent are small and medium-sized enterprises (SMEs).

17. It is estimated that there are around 2500 dismantlers, salvage operators, scrapyards, and secondary metal merchants currently dealing with ELVs, in one form or another, in the UK.²¹ Estimates suggest that an additional 500 to 800 sites may be operating illegally.²² There are 37 shredding facilities in the UK, half of which are owned by two firms. There are some 1200 reprocessors and recyclers in total in the UK, though not all of these deal currently, or will deal in the future, with materials from ELVs.

Benefits

Part IV of draft Statutory Instrument ‘Treatment Networks’ - Article 5 of the ELV Directive: Collection

18. Article 5 of the ELV Directive says that “*Member States shall take the necessary measures to ensure that the delivery of the vehicle to an*

¹⁹ In the sense that broad principles of how such a system could work were outlined in the DTI’s 1st Consultation Paper on the ELV Directive (August 2001).

²⁰ Standard Industrial Classification.

²¹ The exact number is not clear, though a sizeable number of these are likely to deal with relatively few ELVs.

²² That is, operating without a Waste Management Licence or a registered exemption.

authorised treatment facility..occurs without any cost to the last holder and/or owner as a result of the vehicle's having no or a negative market value.” and that “Member States..ensure that..producers meet all, or a significant part of, the costs of the implementation of this measure..”

19. The obligation for producers to provide a national network for the free take-back/collection of their own marque²³ of vehicles, as outlined in the draft SI, is consistent with, and is indeed the driving force behind, the principle of (Extended) Producer Responsibility ((E)PR)) in that it requires producers to take a direct interest in the lifecycle of the products they put on the market.

20. Producers will thus have the incentive to design and manufacture their products to minimise any costs they incur when their products reach the end of their life. This should promote an innovative response to the ELV Directive, and for the UK as a whole this should achieve compliance in the most cost effective manner and with maximum benefit.

21. Producer responsibility obligations in the national law of Member States, so far as they currently exist, and across a range of waste streams usually provide producers with the option of dealing with the waste that may arise from the products they have, or will, put on the market. In the context of this Directive, for ELVs in the Netherlands where Auto Recycling Nederland (ARN) operates as a collective market-share-based system, producers are able to opt-out of the ARN system and deal with the waste from their own marque of vehicles provided they meet the standards laid down in Dutch legislation for the treatment and recovery of ELVs.

22. Whilst the benefits of own marque producer obligations are clear in terms of the incentives to design and manufacture products with a view to the recovery of products at the end of their life, they do not come without potential costs. In the context of the ELV Directive, these principally relate to the issue of accruals, and the costs to producers of establishing a network of take-back/collection facilities to deal with their own marque of vehicles when they become ELVs.

23. Given that the takeback and collection requirements of Article 5 of the ELV Directive relate to all vehicles that exist on the market at the time the requirement comes into force (from 1 January 2007), producers dealing with their own marque of vehicles will have a stock of vehicles in the UK car parc that they will be responsible for in terms of providing free take-back and achieving the re-use and recovery targets of the Directive.

24. This creates a liability for producers. This liability will need to be reflected in the accounts of producers in accordance with FRS12 of the UK's GAAP.²⁴

²³ Own marque (or own brand or own label) in the sense of vehicles badged to be identifiable as being part, or whole, of a producer's output.

²⁴ In the UK, companies produce their accounts in accordance with UK generally accepted accounting principles or practice (“UK GAAP”). UK GAAP consists of the UK Companies Acts and Financial Reporting Standards (“FRSs”), which are issued by the Accounting Standards Board (ASB). FRS12

The requirement to make a provision for such a liability will negatively impact on a producer's balance sheet and profit and loss account.

25. The impact of this on producers will vary according to the financial position of each individual producer but could potentially have negative impacts on credit ratings, shareholder confidence and in extreme cases result in technical insolvency.

26. The need to avoid, or at least minimise, the need to book an accrual was seen by some vehicle manufacturers as an important requirement for UK transposition of the ELV Directive. In its written evidence to the Trade and Industry Committee (TIC)²⁵ the Ford Motor Company said that *"..one of the basic principles in considering the implementation of the ELV Directive into UK law (is)..a system, which avoids the obligation of producers to book one-off reserves for the historic car park."* MG Rover Group Ltd said in its written evidence to the TIC that *"The issues foremost for MG Rover are..ability to avoid accruals and historic car parc liabilities.."*

27. Under an own marque system for ELVs, producers will need to establish a network of takeback/collection facilities for their own vehicles. This will involve producers contracting with a number of ATFs. The establishment and monitoring of these contracts will not be costless.

28. The potential costs of accruals and contracting led the DTI to formulate the Producer Choice Option (PCO) as a possible implementation method for the ELV Directive. PCO was based on a default system of producer responsibility based on the market share of new car registrations with obligations discharged via a system of tradable evidence notes in relation to tonnages of material. Producers who saw greater benefit in dealing with their own marque of vehicles could opt-out of the default system, provided they achieved the same levels of treatment and recovery as in the default system.

29. In July 2001 the DTI sought accounting advice on the ELV Directive from Ernst and Young. This advice said that a tonnage target option for fulfilling obligations *"..would operate as a 'pay as you go' scheme and would not require an accounting liability to be recognised in the individual producer's accounts with regard to the car park. This is because there would be no linkage between the historic production of vehicles and the allocation basis for the costs of recycling them."*

30. After formulating PCO the DTI sought further accounting advice from Ernst and Young. This supported the DTI view that producers who remained

says that a provision should only be recognised in a company's accounts when all of the following conditions are met: an entity has a present obligation as a result of a past event; it is probable that a transfer of economic benefits will be required to settle the obligation; and a reliable estimate can be made of the amount of the obligation.

²⁵ *First Report, End of Life Vehicles Directive*, Trade and Industry Committee, HC 299, 27 November 2001.

in the default system of PCO would avoid the need to book an accrual for their historic car parc. Hence, PCO was seen as providing a benefit to producers who were concerned about the potential size of their liabilities as a result of their historic car parc.

31. However, this was predicated on sufficient numbers of producers choosing to remain in the default system so as to break the link between current costs and past events, such that the recognition requirement in FRS12 where *“A provision should be recognised when an entity has a present obligation as a result of a past event..”* would not be met.²⁶

32. In addition, PCO was not without its own challenges. The establishment of a tradable evidence note system brings with it its own costs in terms of establishment and monitoring. These costs could be disproportionate to the total volume of waste that a notes system would cover under the ELV Directive.²⁷

33. Also PCO required the setting of targets. Given that producers are unable to control where and when vehicles will arise as ELVs, and given that the numbers and volume of ELVs will vary year by year, the setting of targets under PCO would not have been straightforward.

34. At the same time as asking Ernst and Young for accounting advice on PCO the DTI invited the accountancy firm to formulate a possible alternative option for implementation of the ELV Directive. This resulted in Option 5.²⁸

35. This option was for a fund to be established to finance the costs of the Directive. A levy would be placed on every new vehicle sold or imported and *“..would be collected from producers, but could be passed on to purchasers of new vehicles by way of a fixed amount to be added to the purchase price.”*

36. The fund would be an independent body responsible for the setting, collection and distribution of the levy.

37. Option 5 also contained a ‘bounty’ element. It was proposed that this would be in the form of a payment to a last holder/owner for returning his

²⁶ For example, if all but one vehicle manufacturer opted-out of the default system this would leave a single VM in the market share system but in reality dealing with his own marque of vehicles.

²⁷ One issue of concern for obligated businesses under the UK’s Packaging Regulations is the administrative costs involved with PRNs/PERNs. PRNs/PERNs cover over 5 million tonnes of packaging waste arising in the UK currently and a greater volume of packaging waste in the future. To reach the 85% target in the ELV Directive will require the additional recovery of less than 200,000 tonnes of material.

²⁸ So called because the first DTI consultation on implementation of the ELV Directive (August 2001) considered three options: Option 1 – an own marque approach; Option 2 – a tonnage target approach; and Option 3 – a hybrid of the first two Options. Following this consultation the British Metals Recycling Association (BMRA) proposed Option 1a (an own marque variant), and the Society of Motor Manufacturers and Traders (SMMT) proposed Option 4.

vehicle legally into the appropriate network of ATFs. The aim of this 'bounty' was to reduce the risk that last holders/owners would increasingly abandon their vehicles once the Directive came into force. The justification for the 'bounty' was "*..that last owners require a financial incentive to deliver their ELVs to a treatment facility and that penalties and enforcement alone are not enough.*" This raises the issue of deadweight given that the vast majority of ELVs are disposed of by last holders/owners legally and with due care.²⁹

38. Option 5 was very similar in nature to the ARN system that operates in the Netherlands, except for the bounty element. Under ARN a levy is incurred upon registration of each new vehicle in the Netherlands. ARN contracts with a network of treatment facilities and reprocessors to ensure that all ELVs that arise in the Netherlands are treated and recovered.

39. ARN has built up a surplus of funds and this reflects, in part at least, the difficulty of setting an appropriate levy to fund treatment and recovery in advance of the actual activity. In addition, some question the efficiency of ARN given that on average a facility contracted to ARN deals with around 1,000 ELVs per annum.³⁰

40. The establishment of a UK ARN type system also raises the issues of: the legal and financial status of a fund and the type of levy that would be introduced to finance the fund;³¹ the administrative costs of a fund in terms of monitoring and financing of contracted parties; whether a fund-type system financed by a charge on consumers or vehicle owners is consistent with the financing intentions of the Directive and whether this would be acceptable to the European Commission; and whether a fund system based on current market share is equitable amongst producers.

41. In addition, the establishment of a fund-type system brings with it the establishment of a bureaucracy that will not be costless. Fund-type systems that exist in other Member States to deal with EPR across a range of waste streams are often criticised by obligated businesses and market commentators because of the volume of resources they use in running themselves.

42. On top of all of this are issues of competition. A number of Member States' national systems for recovering waste have come under increasing scrutiny from competition authorities in recent times.

²⁹ Deadweight is expenditure to promote a desired activity which would in fact have occurred without the expenditure.

³⁰ ARN contracted with 264 "*..vehicle dismantlers*" in 2002, who dealt with some 272,546 ELVs in the Netherlands. This means that on average a dismantler in the Netherlands deals with around four ELVs per working day.

³¹ In particular, whether this is a statutory or non-statutory levy or tax.

43. ARN itself was scrutinised by the Dutch Competition Authority and DG Competition of the European Commission in 2001, though it should be noted that it was given a clean bill of health by both.³²

44. However, the European Commission's recent communication *Towards a thematic strategy on the prevention and recycling of waste*³³ says the following:

"the Commission has recently adopted three decisions concerning "green dot" companies due to concerns about the practical application of producer responsibility schemes. The implementation of the ELV and WEEE directives may give rise to further cases. This point was also highlighted in a recent report to the Swedish government, which noted that "statutory producer responsibility has given rise..to monopoly tendencies.."." (Page 32 of thematic strategy).³⁴

45. Prior to Option 5 and PCO, the Society of Motor Manufacturers and Traders (SMMT) proposed Option 4 for implementing the ELV Directive. This was predicated on the belief that the additional costs as a consequence of the Directive could be absorbed by dismantlers, scrapyards and shredders if they improved the efficiency with which they dealt with ELVs.

46. Under Option 4, an ATF who accepted an ELV would have done so because the vehicle had sufficient positive value for the facility to cover the costs of treatment and recovery of the ELV. If an ATF turned away a vehicle it would be a signal that it had no or negative value. Option 4 suggested that shredders should be obligated to take such vehicles and that if they incurred a deficit, because of treatment and recovery costs, then an independent assessment should be made of the size of this deficit. Producers would then cover this deficit, or decide to make alternative arrangements for the take back of no or negative value ELVs if they thought the deficit was in some way inappropriate.

47. One of the rationales for Option 4 was the belief that it would overcome the need for producers to book an accrual, as any deficit that was incurred by shredders could be viewed as a contingent liability for producers.³⁵ However, the accounting advice given to the DTI by Ernst and Young was that if a deficit could be forecast then producers would need to make a provision in their accounts. Of Option 4 Ernst and Young said *"a provision would certainly be*

³² See ARN press releases on ARN web-site, www.autorecycling.nl

³³ Commission of the European Communities, Communication from the Commission, *Towards a thematic strategy on the prevention and recycling of waste*, Brussels, 27.5.2003, COM(2003) 301 final.

³⁴ Green Dot companies provide packaging services for businesses to discharge their obligations under the Packaging Directive (1994) in 11 of the 15 Member States.

³⁵ This would involve a note in the financial statements rather than a liability figure in the balance sheet.

required within the first few years of the scheme's implementation and.. very probably from its commencement."

48. There were also concerns in DTI that Option 4 could have a destabilising effect on the infrastructure dealing with ELVs, given that there were doubts that it was economically realistic. It was not clear that there would be significant numbers of positive value vehicles to enable a market to operate effectively. If there were more negative value than expected then ATFs would be turning away vehicles in increasing numbers for them to fall to shredders and their feeder yards – sites that are significantly less in number. This would run the risk of the possibility of significant levels of stockpiling of ELVs.

49. On top of this, despite it being claimed that Option 4 was a market-based solution to ELV implementation it did actually involve not insignificant interference in the market, as it placed an obligation on shredders to take back all ELVs delivered to them. The TIC enquiry said *"as soon as an obligation comes in, the market that your option four is based on is immediately non-existent. It is an obligation; therefore, the market element has gone."* In addition, Option 4 also involved the establishment of an official Regulator to *"oversee the scheme"*. It was proposed that this Regulator would audit shredder profitability and determine payments.

50. In summary, it is believed that the draft SI to implement this part of the ELV Directive will maximise the potential benefits to the UK from the ELV Directive because:

- It is based on a system which represents the purest form of (E)PR and so should facilitate innovative and cost-effective solutions to achieving the aims of the Directive. An 'own marque' system is consistent with the policies of (E)PR and the polluter pays principle, because it means that producers have responsibility for the products they put on the market when they reach their end-of-life;
- It allows markets to work with least external interference, allowing producers and operators dealing with ELVs to enter into agreements to provide services to last holders/owners, and it allows operators dealing with ELVs to make a free market choice whether to accept or reject ELVs for which they are not contracted to provide takeback;
- It has a financing mechanism consistent with the aims of the Directive as it places financial obligations on producers and allows market mechanisms to work. Alternative options require costs and prices to be set independently of the market and so are likely to be less efficient, and/or require costs to be placed on taxpayers or vehicle owners which is not consistent with the financing intentions of the Directive.
- It should lead to minimal administrative and 'red tape' burdens and is consistent with a 'light regulatory touch' approach to the Directive.³⁶

³⁶ The UK Government has been consistent in its aim to implement the ELV Directive with a 'light regulatory touch.' Recital 7 of the ELV Directive says that in implementing the Directive *"..the normal functioning of market forces should not be hindered."*

Alternative options require further administrative procedures to be put in place to achieve compliance, which are likely to lead to greater 'red tape' costs.

Part IV of draft Statutory Instrument: Treatment Networks – Article 5 of ELV Directive: Collection

51. Article 5 of the ELV Directive requires “*Member States..to ensure..the adequate availability of collection facilities in their territory.*” However, the Directive does not define what 'adequate' is.

52. There are two main issues in determining adequacy – accessibility and capacity. These can pull in opposite directions.

53. Capacity is not necessarily related to the physical number of ATFs. At one extreme one could think in terms of a single ATF (akin to a production plant) processing all ELVs in the UK. Accessibility *is* related to the physical number of ATFs. At another extreme one could think of this in terms of an ultimate level of access for last holders/owners.

54. The former may not be realistic because in reality there will be transport costs from moving ELVs to a 'central' ATF. The latter may not be realistic given that not all sites existing today will invest to reach the new standards of the Directive, and there may be some consolidation in the industry following implementation of the Directive.

55. The Consultation Document outlines the criteria that will be used to consider whether a producer's network is 'adequate' in the UK. It suggests that the last holders/owners of a marque of vehicle (as a population) should not have to travel more than ten miles on average to deliver an ELV into a producer network, and that no individual last holder/owner should have to travel more than fifty miles.

56. The Consultation Document also discusses the option of allowing producers to diverge from this requirement provided alternative arrangements are put in place such that accessibility is not more onerous for last holders/owners.

57. Other Member States who are adopting an 'own marque' solution to post-2007 implementation of the ELV Directive vary in what they consider to be an adequate network.

58. The German ELV Ordinance³⁷ implies that a vehicle manufacturer (VM) should have one ATF/collection point every 50 kilometres (approximately 32 miles). This means that every VM operating in Germany should have around 45 ATFs/collection points across the country.

³⁷ Published 28 June 2002. Specifically “*..the network is sufficiently comprehensive if the distance from the residence of the last registered owner and the collection facility or an authorised dismantling facility designated by the manufacturer for this purpose does not exceed 50 km.*”

59. However, the rationale for the 50 kilometres is unclear, and some vehicle manufacturers in Germany have, or at looking at, putting in place more than the minimum required number of ATFs. Germany also has a different land mass to the UK, a different road infrastructure, and different levels of arisings of ELVs, and so the 50 kilometre requirement is not directly applicable to the UK.

60. The Austrian ELV ordinance implies that take-back facilities/collection points should reflect a VMs dealership network.³⁸ This requirement may have its origins in the belief that a vehicle exiting the car parc is generally replaced by a vehicle entering the car parc.

61. Given the proliferation of dealerships in the UK³⁹ introducing a similar requirement in the UK would lead to severe excess capacity in the market for the takeback and collection of ELVs. The changes to the Block Exemption for the sale of new vehicles could also make the link between dealership numbers and vehicles entering and leaving the UK car parc less specific in the future.⁴⁰

62. In Italy,⁴¹ the Decree says that a VM will be encouraged to provide “..a uniform presence, throughout the territory, of facilities for collection, treatment and recycling.” But the Decree does not specify what this uniform presence should look like.

63. In Ireland, the Bill⁴² implementing an own marque approach to the Directive does not specify what an ‘adequate’ network should look like.

64. In summary it is considered that the criteria outlined in the Consultation Document are the most beneficial option to implementing this part of the Directive because:

- An average 10 mile requirement for the distance between ATFs should provide a level of accessibility that is convenient for last holders/owners given that a number of last holders/owners will require, or prefer, their ELVs to be collected;
- A distance of 10 miles was discussed in the DTI’s first consultation on the ELV Directive and gained some level of support;

³⁸ *End of Life Vehicles Ordinance*. Specifically, “The distance to these collection facilities must not be greater than the regional mean distance to the points of sale for the relevant vehicles.”

³⁹ See *New Cars: A report on the supply of new motor cars within the UK*, Competition Commission, April 2000, Cm4660. Specifically Chapter 6 and Table 6.1, page 175, which suggests that there are over 6,000 dealerships in the UK.

⁴⁰ See for example European Commission Press Release 6 February 2003.

⁴¹ *Outline of the Legislative Decree for the Implementation of Directive 2000/53/EC regarding vehicles no longer in use*.

⁴² *Waste Management Bill, July 2003*.

- Requiring ATFs to be equivalent in number to car dealerships in the UK is likely to result in significant excess capacity for the treatment of ELVs and significant administrative and monitoring costs for producers;
- There is no obvious reason why the German requirement of 50 kilometres should be directly applicable to the UK.

**Part VI of draft Statutory Instrument: Recovery and Recycling Targets:
Article 7 of ELV Directive: Reuse and Recovery**

65. The ELV Directive allows Member States the flexibility to apportion the reuse and recovery targets of the Directive across a wide range of economic operators. Economic operators are defined in the Directive as “*..producers, distributors, collectors, motor vehicle insurance companies, dismantlers, shredders, recoverers, recyclers and other treatment operators of end of life vehicles, including their components and materials.*”

66. The draft SI concentrates the achievement of the Directive’s re-use and recovery targets on producers, as defined by the Directive, i.e. vehicle manufacturers and importers. The reasons for this are outlined below.

67. First, spreading the targets across the range of economic operators the Directive allows involves administrative complexity both in terms of apportioning responsibilities and in terms of monitoring and enforcing responsibilities. The latter in particular would not be insignificant given the number and range of economic operators involved in the new and used vehicle market and in the market dealing with ELVs in the UK. There are relatively few vehicle manufacturers and importers compared to other operators in these markets and this should facilitate effective enforcement of the targets.

68. Secondly, given that the UK already achieves levels of re-use and recovery of ELVs estimated to be in the region of 77-80 per cent, the ELV Directive requires a relatively small increase in the total amount of material from ELVs to be recovered. For around 2 million ELVs annually in the UK, and based on estimates of the weight of these ELVs, the 85 per cent target implies an additional tonnage in the region of 87,000–166,000 tonnes. It is doubtful if such a volume of material merits spreading the targets across the range of economic operators the Directive allows.⁴³

69. Thirdly, it is not obvious that spreading the targets across the range of economic operators the Directive allows would bring forth any additional economic benefits over and above concentrating the targets on producers, given that it is producers who are best placed to determine the design and recyclability of the vehicles they put on the market.

⁴³ The UK’s Packaging Regulations ‘share’ the responsibility for recovering packaging along the packaging chain, but this is for over 5 million tonnes of recovery from an annual waste stream of over 10 million tonnes.

70. The draft SI thus says that producers (i.e. vehicle manufacturers and importers) shall be responsible for ensuring that the re-use and recovery targets of the ELV Directive are achieved for their own marque of vehicles which are processed through their own marque network. This provides a direct link between the costs of designing vehicles for recycling (including the use of materials in manufacture) and the benefits from facilitating more efficient recycling.

71. In the situation where an ATF who does not have a contract with a producer (this could be an ATF that has a contract with another producer or an ATF who does not have a contract with any producer) takes a producer's vehicle out of that producer's network, the draft SI says that that ATF shall be responsible for achieving the reuse and recovery targets for that ELV, and not the producer.

72. Some have argued that this is in effect spreading the target and so adds administrative complexity, while some have argued that this is unfair because it penalises uncontracted ATFs at the expense of contracted ATFs. But this applies to contracted ATFs who accept delivery of a vehicle that they are not contracted for as well as uncontracted ATFs who accept a vehicle that they are not contracted for.

73. Moreover, the rationale behind this proposal is that it enables obligated parties to achieve the target in the most cost-effective and efficient manner possible, and allows as free a market as possible to operate in the treatment and recovery of ELVs.

74. A producer who establishes a network for his own marque of vehicles when they become ELVs is required to provide free take-back to the last holder/owner of these ELVs when they are delivered into that network, and to ensure that these ELVs are recycled and recovered to the targets set down in the Directive.⁴⁴ It is expected that producers will achieve both of these requirements through a system of contracting with ATFs, in the first instance, and then with reproprocessors to recover and recycle ELV materials.

75. In terms of takeback, and under the draft SI, contracted ATFs and uncontracted ATFs are able to take in any ELV they wish provided that they offer free-take back to the last holder/owner.⁴⁵ If the last holder/owner wishes to pay for the take back services of an ATF the Directive does not preclude this, but the last holder/owner is not obliged to pay for a take back service.

76. An ATF who takes a marque of ELV for which it is not contracted has thus made a free market decision that there is sufficient value in that ELV to cover

⁴⁴ Provided, of course, these vehicles are complete vehicles as defined in *The End-of-Life Vehicles Regulations 2003*, SI 2003, No.2635.

⁴⁵ Contracted ATFs will be obligated to take back ELVs of producers who they are contracted to, but may also wish to access ELVs that they do not have contracts for.

the costs in respect of the take back and recovery requirements of the Directive.

77. It does not seem appropriate to require an own marque producer to finance the takeback and recovery requirements of the Directive for the vehicles of his own marque that are accepted for delivery outside of his network. This is because the last holder/owner will have sufficient information on the availability of an adequate own-marque network to enable him to take advantage of the free take-back services of contracted ATFs.

78. If an ATF takes in an ELV for which he does not have a contract one of three things is happening:

- The ELV has sufficient positive value for the ATF to cover the costs resulting from the requirements of the Directive;
- The last holder/owner has willingly paid the ATF for his take-back services; or
- The ATF has paid the last holder/owner for his ELV.

79. In all of these cases it does not seem appropriate to require an own marque producer to be responsible for the financing of takeback and for the recovery targets of the Directive. This is because in the first case the ATF has made an informed and free market decision to accept the ELV – he has no obligation to accept any ELV;⁴⁶ in the second case the last holder/owner has willingly paid the costs of the requirements of the Directive – though, of course, the last holder has the right to free takeback via the own marque network;⁴⁷ and in the third case it would undermine the own marque network and lead to inefficiencies and cost increases for obligated producers if they were obliged to finance the costs of ATFs with whom they did not have a contractual relationship.

80. The third case may require further elaboration. If own marque producers were required to finance the costs of own marque ELVs which did not come back through their network then this could undermine the contracting arrangements they have made for their network, which are likely to be based on estimates of the numbers and values of ELVs entering a contracted site. This is because an ATF could pay the last holder/owner for his ELV and recover these costs from the own marque producer via his obligation.

81. Placing an obligation on a party unable to exercise any control over the potential costs of that obligation is likely to lead to inefficient and costly compliance.

⁴⁶ Except under contract.

⁴⁷ Some last owners/holders will still require, or prefer, to have their ELVs collected at cost even when they are entitled to free takeback, or to pay an ATF if there is one in very close proximity.

Costs

Part IV of draft Statutory Instrument ‘Treatment Networks’ - Article 5 of the ELV Directive: Collection

82. In the UK there are no official statistics on the number of ELVs that arise each year.⁴⁸ However, ACORD⁴⁹ produces an annual report providing estimates of the number of ELVs, the weight of ELVs, and information on the recovery of ELVs in the UK.

83. The last published report from ACORD was in 2001 and relates to estimates for 2000. These estimates were for 2.017 million ELVs arising in the UK in 2000,⁵⁰ with an average weight per ELV of 1030 kilogrammes.⁵¹

84. Currently in the UK very few ELVs are treated in accordance with the requirements of the ELV Directive. Dismantlers who depollute ELVs at present are at the cutting edge of the industry, whilst shredders and their feeder yards do not depollute ELVs at all (except for purposes of trial). The ELV Directive requires every ELV to be de-polluted prior to further treatment, shredding and reprocessing.

85. Estimates of the costs of treating an ELV in the UK to the required standards of the Directive have varied widely since the Directive was adopted, but these estimates have become more focused in the last year or so. Of the latest estimates from industry, one is that it will cost between £15 and £30 per ELV to de-pollute to the standards of the Directive, another estimate is that it will cost between £20 and £25 per ELV. Other estimates are in terms of time. One estimate is that the process of providing a free takeback service for an

⁴⁸ The number of ELVs that arise within a Member State will vary year by year and will be determined by a range of both macroeconomic and microeconomic factors. These include: the number of new car registrations; the economic life of a new car; the relative price of new and second-hand cars; technology and development in vehicle production; the number of premature ELVs (via accidents, burn-outs from theft etc); and the extent of trade in old and second-hand vehicles in and between member States.

⁴⁹ ACORD stands for the Automotive Consortium On Recycling and Disposal. ACORD was formed in 1991 and comprises representatives of motor vehicle manufacturers, the vehicle dismantling and shredding industries, and the plastic and rubber manufacturing industries. It also has support and input from component suppliers, the steel and glass industries, the insurance industry and UK Government.

⁵⁰ ACORD estimates the number of ELVs as the difference between the number of cars in the vehicle parc at the end of one year (the stock of vehicles) and the number of cars in the vehicle parc plus the flow into the vehicle parc (via new vehicle registrations) in the previous year.

⁵¹ ACORD estimates are that of the 2.017 million ELVs in the UK in 2000, 1.83 million were cars (Category M1) and 0.18 million were vans (Category N1). The ELV Directive applies to vehicles of category M1 and N1 – i.e. vehicles with less than eight seats, and vehicles weighing less than 3.5 tonnes. It is not straightforward to estimate the average weight of an ELV in the UK. ACORD uses manufacturers’ data for around 70 popular 1998 car models to estimate the average weight of ELVs in the UK in 2000.

ELV could take from 45 minutes to 1 hour 15 minutes. In terms of current average hourly labour costs in the UK this equates to £12 - £20 per ELV.⁵²

86. For an estimated 2 million ELVs arising in the UK each year the estimates outlined above give a total cost estimate for this part of the draft SI in the range of £24 million - £60 million per annum.

Part IV of draft Statutory Instrument: Treatment Networks – Article 5 of ELV Directive: Collection

87. It is not straightforward to provide an estimate of the costs businesses may incur, in terms of administration and monitoring, as a consequence of establishing a system of contracts to provide an 'adequate' network of takeback/collection facilities.

88. A figure in the region of 10 per cent of the costs of a takeback and collection network may not be an unreasonable first estimate, and this would imply costs for this part of the draft SI in the range of £2.4 million - £6 million per annum.

Part V of draft Statutory Instrument: Recovery and Recycling Targets: Article 7 of ELV Directive: Reuse and Recovery

89. The ELV Directive requires 85 per cent of ELVs on average by weight to be re-used and recovered from 1 January 2006, and 95 per cent on average by weight to be re-used and recovered from 1 January 2015. The draft SI interprets this such that the UK is to meet the 85 per cent target during 2006, and this is to be reported on in the first quarter of 2007.

90. ACORD estimated that in 2000, 69 per cent of materials from ELVs were recycled,⁵³ and 11 per cent of parts from ELVs were re-used. This suggests an estimate for the 2.108 million tonnes of materials from ELVs discarded in the UK in 2000, of 80 per cent recovery (1.69 million tonnes) and 20 per cent disposal (422,000 tonnes).

⁵² Average hourly labour cost for all full-time equivalents of £12.03 as of April 2003, plus a 30 per cent mark-up for non-wage costs (e.g. National Insurance and pension contributions). Of course, the cost in 2007 will depend on the growth in real terms in labour costs to 2007. Average earnings generally increase in real terms, but it is not straightforward to estimate the growth in future earnings and for simplicity we use the figures in the main text, given that these figures can only be indicative and also cover a range. These cost estimates do not include the costs of issuing Certificates of Destruction (CoDs) to last holders/owners. These costs were estimated in the Full RIA for the first set of Regulations implementing the ELV Directive in the UK, to be in the range of £6 million - £16 million per annum for all ELVs arising in the UK.

⁵³ Composed of 62 per cent of ferrous metals, 5 per cent of non-ferrous metals, and 2 per cent of non-metallic materials.

91. More recent estimates from some parts of industry, following trials, suggest that metal recycling from ELVs amounts to 72 per cent of the average weight of an ELV.⁵⁴ In addition to this, estimates from other parts of the downstream industry suggest that the re-use of parts may account for around 5 per cent of the average weight of ELVs.⁵⁵ This suggests a recovery figure in the region of 77 per cent.

92. A report for the Department of Environment, Food and Rural Affairs (DEFRA)⁵⁶ estimated that for the total number of ELVs arising in the UK in 2000, material re-use and recovery was 77 per cent. This report also estimated that there were 2.110 million ELVs in the UK in 2000 with a total weight of 1.734 million tonnes.

93. The figures outlined above give a range of estimates for the percentage of ELVs currently re-used and recovered in the UK from 77 per cent to 80 per cent. This implies that the UK needs to reuse and recover 5 per cent to 8 per cent additional material by weight from annual ELV arisings, which on the estimates available amounts to around 87,000 tonnes to 166,000 tonnes.

94. Assuming that 77 per cent to 80 per cent of ELVs on average (by weight) are currently recovered in the UK, then 5 to 8 per cent of average weight is needed to achieve the 85 per cent target of the Directive.

95. Using the estimates for the average weight of ELVs outlined above, this means 43 kilogrammes to 79 kilogrammes additional material will need to be recovered from an average ELV to achieve the 85 per cent target.

96. Estimates from ACORD are that two out of the five tyres on an ELV are currently re-used because they are part-worns or can be retreaded. The TRL Report for DEFRA provides an estimate that three out of five ELV tyres are currently re-used. This leaves scope for either two or three tyres per ELV to be recovered in the future.⁵⁷

97. If 43 kilogrammes are needed to achieve the 85 per cent target, then additional recovery of tyres represents around 13-20 kilogrammes.⁵⁸ Costs of recovering these are estimated at around 70 pence to £1 per tyre, which gives

⁵⁴ Reflecting the metallic content of the ELVs used in the trials.

⁵⁵ The re-use of parts from premature ELVs (insurance write-offs etc) is much greater than the re-use of parts from natural ELVs (i.e. vehicles that have reached their natural end-of life). Premature ELVs make up around 20 per cent of total ELV arisings.

⁵⁶ *Data required to monitor compliance with the End of Life Vehicles Directive*, TRL Limited (January 2003).

⁵⁷ Assuming an ELV has all five tyres when it is discarded.

⁵⁸ Assuming each tyre weighs 6.5 kilogrammes.

a total cost range for all ELVs arising in the range of £2.8 million - £6.3 million per annum.

98. The battery of an ELV is estimated to weigh between 12-15 kilogrammes. The report by TRL for DEFRA estimated that 90 per cent of ELV batteries are currently recycled. Some industry players believe this figure is closer to 70 per cent. Taking these two estimates gives a range of 10-30 per cent of batteries that could be recycled from ELVs to contribute to achieving the 85 per cent target, and this is equivalent to 1.2-4.5 kilogrammes per ELV. Costs for recycling these are estimated to be around £1 per unit, which gives a total cost for all ELVs arising in the range of £0.2 million - £0.6 million per annum.

99. This leaves 18-29 kilogrammes per ELV material to be recovered to achieve the 85 per cent target.

100. The plastic bumpers on an ELV are estimated to weigh around 8 kilogrammes. One industry estimate is that it costs around £1 to recycle a plastic bumper. This suggests a total cost for ELVs arising in the UK in the range of £4 million - £4.2 million per annum.

101. Glass is estimated to represent around 33 kilogrammes of an average ELV. One industry estimate is that it will cost around £27 per tonne to produce aggregate from ELV glass. To recycle 10-21 kilogrammes of ELV glass to reach the 85 per cent target would then cost around £1 per ELV, which for all ELVs arising represents a cost in the range of £2 million- £2.1 million per annum.

102. The recovery of material means that landfill costs incurred currently are avoided. For an estimated landfill cost of £20 - £40 per tonne⁵⁹ recovery of 43 kilogrammes represents a cost saving of around £1 per ELV, which for all ELVs arising represents a saving in the range of £2 million - £2.1 million per annum.

103. Summing the above figures gives a cost estimate of achieving the 85 per cent target at the bottom of the range of between £7 million - £11.1 million per annum.

104. If 74 kilogrammes is required to reach the 85 per cent target then after glass is recycled and in addition to the above cost estimates, an additional 13-24 kilogrammes per ELV would need to be recovered.

105. The costs of recycling plastics (not including bumpers) from ELVs will depend on the type of plastic that is recycled and the quality of the material. It will also depend on whether recycling takes place pre or post shredding. Very few estimates exist of the costs of recycling ELV plastics. If we assume that the cost is around £100 per tonne then to reach the 85 per cent target by this

⁵⁹ The total of the gate fee plus the landfill tax.

route would result in costs in the range of £2.6 million - £5.1 million per annum for all ELVs in the UK.

106. Savings from avoiding the costs of landfilling 79 kilogrammes per ELV are estimated to range from £3.2 million - £6.7 million per annum for all ELVs.

107. Adding these estimates to those outlined above gives an estimate of achieving the 85 per cent target at the top of the range of between £8.4 million - £11.6 million per annum.

108. In summary the above calculations give a cost estimate of achieving the 85 per cent target in the range of £7 million - £11.6 million per annum.

EQUITY AND FAIRNESS

109. The benefits of the draft SI should be spread fairly evenly across different social and economic groups and different geographical regions in the UK. The costs of the draft SI should not impact disproportionately on any particular businesses amongst those affected.

SMALL FIRMS IMPACT TEST

110. The ELV Directive provides a number of exemptions for small-scale vehicle producers and these are utilised in the draft SI.⁶⁰ Under an 'own marque' system producers will only be responsible for the vehicles they put on the market that arise as ELVs in their network. Smaller producers can form consortia or employ third-party service providers to minimise their administrative costs of compliance.

111. Under the draft SI, ATFs are not restricted to forming contractual links with only one producer, and also do not need to form any contractual links if they do not wish. ATFs are not obliged to accept ELVs delivered to them outside of their contractual arrangements with producers, and can thus make a free market decision on the net value of ELVs.

COMPETITION ASSESSMENT

112. Since 2002 a competition assessment has been a requirement of Departmental RIAs. This assessment has two parts – an initial Competition Filter, which may in turn lead to a more thorough competition assessment.

⁶⁰ Specifically the Directive allows exemption for small-scale producers (less than 500 vehicles per annum) from Articles 7(4), 8 and 9. Article 7(4) relates type-approval to recyclability. Special-purpose vehicles are exempt from Article 7, i.e. the reuse and recovery targets. Three-wheel motor vehicles are exempt from Articles 5(1) and 5(2), i.e. the requirement to establish an adequate takeback/collection network.

113. The competition filter consists of 9 *yes/no* questions.⁶¹ Five of these relate to the competitive process that exists, or may exist, in the market(s) affected, two relate to supply and demand factors in the market(s), and two relate to market outcomes.

114. Applying the competition filter to the draft SI for the ELV Directive gives the following results:

- In terms of market structure the UK car market has a number of players competing actively on market shares. More than one vehicle manufacturer (VM) has a 10 per cent or greater market share but no VM, nor professional importer, has a market share in excess of 20 per cent. The shredding industry is highly concentrated in the UK with two firms having over 70 per cent of the market. Dismantlers, scrapyards and secondary metal merchants tend to be SMEs. The answers to Questions 1-3 of the Competition Filter are thus all yes for the UK shredding industry, yes for question one for the UK car industry, and all no for UK dismantlers, scrapyards and secondary metal merchants.
- Questions 4 to 6 of the competition filter relate to the potential disproportionate impacts on costs for different firms in the markets affected by the proposed regulation. The answer to both of these questions for the draft SI is no because businesses in their specific markets will be impacted only in relation to their level of activity in the market, and the obligations on businesses will be for existing firms as well as for new firms.
- Question 5 asks if the regulation is likely to affect market structure and the number or size of firms. This is unlikely to be the case for the motor vehicle industry (given that the costs of the draft SI are relatively small in relation to the size of the car market in the UK). It is difficult to disentangle potential impacts on dismantlers, scrapyards, and salvage operators from the regulations that came into force in November 2003 and this draft SI.⁶² However, it is not obvious that there will be a detrimental effect on competition given the requirement in the draft SI for an adequate national network of ATFs, and given that obligations with respect of free takeback will only fall on ATFs when they agree or choose to take them on.
- Question 7 asks if the regulation will lead to higher operating costs for new or potential firms compared to existing firms. This will not be the case under the draft SI because all affected businesses will need to meet their obligations or achieve the same standards in terms of dealing with ELVs.

⁶¹ See *Guidelines for competition assessment: A guide for policy makers completing Regulatory Impact Assessments*, OFT 355 (February 2002).

⁶² The standards to be reached to become an ATF set down in the November 2003 regulations and the enforcement of these standards equally across all players is likely to be an important factor in the willingness of businesses to invest.

- Question 8 asks if the market is characterised by rapid technological change. Whilst the vehicle industry is characterised by technological change, the draft SI is not expected to have a negative impact on innovation in the industry. The downstream industry dealing with ELVs is generally not characterised by rapid technological change.
- Question 9 asks if the regulation would restrict the ability of firms to choose the price, quality, range or location of their products. The draft SI is not expected to have a significant impact in this area given that it does not impact on the ability of vehicle manufacturers to sell new vehicles, and it allows the downstream industry to compete to determine which ELVs they want to deal with.

115. In summary the competition filter suggests that the draft SI is unlikely to have a detrimental impact on competition, in either the vehicle industry or the downstream industry dealing with ELVs in the UK.

SUMMARY AND RECOMMENDATION

116. This partial RIA outlines the benefits and costs of the DTI's draft SI to complete transposition of the ELV Directive in the UK. The estimated costs of the draft SI estimated here are set out in the table below:

Table 1: Estimated costs of draft SI (£million per annum)

<i>Article 5: Collection</i>	£26.4 million - £66.6 million
<i>Article 7: Reuse and recovery</i>	£7 million - £11.6 million
Total	£33.4 million - £78.2 million

DRAFT STATUTORY INSTRUMENTS

2004 No.

ENVIRONMENTAL PROTECTION

**THE END-OF-LIFE VEHICLES (PRODUCER RESPONSIBILITY)
REGULATIONS 2004**

<i>Made</i> - - - -	<i>2004</i>
<i>Laid before Parliament</i>	<i>2004</i>
<i>Coming into force</i> - -	<i>2004</i>

ARRANGEMENT OF REGULATIONS

PART I

GENERAL

PART II

APPLICATION

PART III

REGISTRATION

PART IV

TREATMENT NETWORKS

PART V
RECOVERY AND RECYCLING TARGETS

PART VI
THE POWERS OF THE SECRETARY OF STATE UNDER THESE
REGULATIONS

PART VII

OFFENCES

PART VIII

MISCELLANEOUS

SCHEDULE 1

Information to be contained in the application for producer registration

SCHEDULE 2

Criteria the Secretary of State may take into account in reaching a decision under regulation
8(3)(c)

SCHEDULE 3

Criteria the Secretary of State may take into account in reaching a decision under regulation 15(2)

SCHEDULE 4

Requirements relating to a producer's network of authorised treatment facilities

SCHEDULE 5

Information to be contained in the certificate of compliance

SCHEDULE 6

The powers of the Secretary of State

SCHEDULE 7

Public Register

The Secretary of State, being a minister designated ⁽⁶³⁾ for the purposes of section 2(2) of the European Communities Act 1972 ⁽⁶⁴⁾ in respect of matters relating to the prevention of waste from

⁽⁶³⁾ S.I. 2001/3495

⁽⁶⁴⁾ 1972 c.68. Under section 57 of the Scotland Act 1998 (c.46), despite the transfer to Scottish Ministers of the function in relation to implementing obligations under Community law in respect of devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by her as regards Scotland.

vehicles and forms of recovery of end-of-life vehicles and their components, in exercise of the powers conferred on her by that section, hereby makes the following Regulations

PART I

GENERAL

Citation and commencement

These Regulations may be cited as the End-of-Life Vehicles (Producer Responsibility) Regulations 2004 and shall come into force on.....2004.

Interpretation

In these Regulations –

“the Directive” means Directive 2000/53/EC of the European Parliament and of the Council on the end-of-life vehicles ⁽⁶⁵⁾;

“authorised treatment facility” means any establishment or undertaking carrying out treatment operations which holds a site licence that meets the requirements of Part VII and Schedule 5 to the end-of-life vehicle Regulations 2003 in compliance with Article 6 of the Directive and Articles 9,10 and 11 of the Waste Directive [equivalent provisions in Scotland & Northern Ireland];

“certificate of compliance” means the certificate referred to in Part VII of these Regulations;

[“certificate of destruction” means the certificate referred to in Part V of the End-of-Life Vehicles Regulations 2003;]

“economic operators” means producers, distributors, collectors, motor vehicle insurance companies, dismantlers, shredders, recoveries, recyclers and other treatment operators of end-of-life vehicles, including their components and materials;

“end-of-life vehicle” means a vehicle which is waste within the meaning of Article 1(a) of the Waste Directive;

“producer” means the vehicle manufacturer, or the professional importer of a vehicle into a member State;

“recovery” means any of the applicable operations provided for in Annex IIB to the Waste Directive;

“recycling” means the reprocessing in a production process of the waste materials for the original purpose or for other purposes but excluding energy recovery, energy recovery means the use of combustible waste as a means to generate energy through direct incineration with or without other waste but with recovery of the heat;

“reuse” means any operation by which components of the end-of-life vehicles are used for the same purpose for which they were conceived,

⁽⁶⁵⁾ OJ No.L269,21.10.2000,p.34 as amended by the Commission Decision of 27 June 2002, 2002/525/EC(OJ No.L170, 29.06.2002, p.81).

“treatment” means any activity after the end-of life vehicle has been handed over to a facility for depollution, dismantling, shearing, shredding, recovery or preparation for disposal of the shredder wastes, and any other operation carried out for the recovery and/ disposal of the end-of-life vehicle and its components and “treat” and treated shall be construed accordingly.

“vehicle” means any vehicle designated as category M1 or N1 defined in Annex IIA to Council Directive 70/156/EEC relating to the type-approval of motor vehicles and their trailers ⁽⁶⁶⁾, and three wheel motor vehicles as defined in Council Directive 92/61/EEC relating to the type-approval of two or three wheel motor vehicles ⁽⁶⁷⁾, but excluding motor tricycles;

“Vehicle Identification Number” means the number referred to in the Annex to Directive 76/114 as amended by Directive 78/507 which is a fixed combination of characters assigned to each vehicle by the manufacturer;

“the Waste Directive” means Council Directive 75/442/EC on waste.⁽⁶⁸⁾;

“year” means a calendar year beginning on 1st January.

⁽⁶⁶⁾ OJ No L042, 23.02.1970, p.1, as amended by Directive 98/91/EC of the European Parliament and of the Council (OJ L11, 16.01.1999, p.25).

⁽⁶⁷⁾ OJ No L225, 10.08.1992, p.72

⁽⁶⁸⁾ OJ No. L194, 25.07.1995, p. 39; amended by Council Directives 91/156/EEC (OJ No. L78, 20.03.1991, p.32) and 91/692/EEC (OJ No. L377, 31.12.1991, p.48), and by Commission Directive 96/350/EC (OJ No. L135, 06.06.1996, p.32).

PART II

APPLICATION

Vehicles and End-of-Life Vehicles to which these Regulations apply

3.—(i) These Regulations apply to vehicles and end-of-life vehicles including their components and materials.

(2) The Regulations shall apply irrespective of how the vehicle has been serviced or repaired during use and irrespective of whether it is equipped with components supplied by the producer or with other components whose fitting as spare or replacement parts accords with the appropriate Community or domestic provisions.

Existing Community legislation and relevant national legislation

4. Nothing in these Regulations shall affect the application of existing Community legislation and relevant national legislation, in particular as regards safety standards, air emissions and noise controls and the protection of soil and water.

Special-purposes vehicles

5. Part V of these Regulations shall not apply to special-purpose vehicles as defined in the second indent of Article 4(1)(a) of Directive 70/156/EC.

Three-wheel motor vehicles

6. These Regulations do not apply to three-wheel motor vehicles apart from the provisions in regulations 13(1) to (4), and 14 to 19.

PART III
REGISTRATION

Registration and declaration of responsibility by producers

7.—(1) By 31 December 2004 each producer shall apply to the Secretary of State for registration in respect of those vehicles which he has placed on the market before the date of his application for registration.

(2) From [1 January 2005] each producer shall apply to the Secretary of State for registration in respect of vehicles which he places on the market which were not the subject of a previous application for registration under paragraph (1) [within ----- of placing those vehicles on the market].

[(3) Where a producer makes an application to the Secretary of State for registration under paragraph (1) or (2) it shall be made in accordance with Schedule 1.]

(4) The details provided by a producer in compliance with the obligations referred to in paragraphs 1 and 2 shall be included in the register of producers to be maintained the Secretary of State for the purposes of these Regulations.

(5) A producer who makes a declaration under this Regulation shall be treated as remaining responsible for those vehicles in respect of which a declaration is made unless he notifies the Secretary of State that his circumstances have changed in accordance with regulation [10].

(6) An application by a producer to register shall -

(a) be made in writing [in the form specified in Schedule 1];and

(b) contain at least the information set out in Schedule 1; and

[(c) include a fee of £X.]

(7) A producer who chooses to provide the vehicle identification number of each vehicle in his application for registration shall make a further declaration by 31 July 2005 and thereafter not more than one month after the end of each period of six calendar months where vehicles are placed on the market during this period.

(8) The Secretary of State shall confirm receipt of a producer's application for registration in writing within -

(a) 21 days of receipt of applications for registration made under paragraph (1);

(b) 28 days of receipt of applications for registration made under paragraph (2).

(9) An application for producer registration shall be treated as granted and the producer shall be registered for the purposes of regulation 7 unless the Secretary of State notifies the producer in respect of applications for registration made under -

paragraph (1) by [31 March 2005] that the application has been refused;

paragraph (2) within 28 days that the application has been refused.

(10) A producer who fails to –

- (a) make an application for registration;
- (b) meet the requirements of paragraphs (6) and (7)

shall be guilty of an offence.

The Secretary of State's declaration of producer responsibility in respect of vehicles placed on the market

8.- [(1) In circumstances where vehicles have been placed on the market, but no producer has made a declaration of responsibility in accordance with the requirements of regulation 7 the Secretary of State may ascribe responsibility to a producer.

(2) Where the Secretary of State makes a decision to ascribe responsibility to a producer under regulation 8(1) she shall provide the producer with notice in writing within 14 days of making her decision.

(3) The notice referred to in paragraph 2 shall include the following –

- (a) details of the vehicles to which it relates as set out in paragraph of Schedule 1;
- (b) if available, information indicating when the vehicles referred to in paragraph (a) were placed on the market;
- (c) the reasons for the Secretary of State's decision that the relevant vehicles have been placed on the market by the producer to whom she has ascribed

responsibility [in reaching her decision under this paragraph the Secretary of State may take into account the matters referred to in Schedule 2];

- (d) a statement notifying the producer of his obligations under Part IV of these Regulations;

- (4) Where the Secretary of State makes a decision to ascribe responsibility under paragraph (1), she shall as soon as practicable after doing so, provide the producer with an opportunity to make representations about the effect of the decision.

(5) If the Secretary of State considers it appropriate to do so, under paragraph (4) or otherwise, whether in consequence of any representations or proposals made to her, she may –

- (a) revoke the decision which she has made under paragraph 1;
- (b) without revoking her decision, at any time modify the terms of her notice in such a manner as she considers appropriate.]

- (6) Where the Secretary of State does not ascribe responsibility to a producer under sub-paragraph (1) in respect of vehicles placed on the market for which no producer has made a declaration of responsibility under regulation 7, those vehicles when they become end-of-life vehicles shall be subject to the agreement referred to in regulation [32].

Transfer of a producer's business to another

9. Where a business is transferred in whole or in part to another person a producer shall be treated as remaining responsible for those vehicles in respect of which he has made a declaration under regulation 7 [or in respect of which the Secretary of State has ascribed responsibility to him under regulation 8] [when they became end-of-life vehicles], unless he is able to demonstrate to the Regulator that the person to whom the transfer has been made has agreed to meet his obligations in respect of those vehicles under these Regulations.

Change in a producer's circumstances regarding his declaration of responsibility

10. Where a producer—

- (a) places vehicles on the market which were not the subject of a previous notification made by him; or
- (b) ceases to place vehicles on the market which were the subject of a notification previously made by him

he shall inform the Secretary of State within 28 days of the change in his circumstances.

Requirements for producer registration

11. The Secretary of State may require a producer who applies for registration to undertake that he will inform her of any change in circumstances which relate to registration (apart from those mentioned in regulation 8) within 28 days of the occurrence of any change.

[Refusal to register a producer

12. A decision by the Secretary of State to refuse to register a producer shall be notified within [] days of the decision to the producer in writing together with the reasons for the decision [and a statement of the offence specified in regulation 7(10)].]

PART IV TREATMENT NETWORKS

Producer's obligation to submit details of the network of authorised treatment facilities

13.- (1) By 1 July 2005 each producer shall submit to the Secretary of State an application for approval of the system he has established for the collection of those vehicles for which he has declared responsibility for placing on the market [under regulation 7], [or for which the Secretary of State has ascribed responsibility to him [under regulation 8], and which he anticipates may become end-of-life vehicles during 2006.

(2) Subject to regulation 18, where there is a significant change in the number of end-of-life vehicles arising in a year after [the year 31 December 2006] a producer shall submit a revised application for approval of the system which he is required to submit to the Secretary of State under paragraph 1.

[(3) Where a producer places vehicles on the market which have not previously been the subject of an application made under paragraph 1, he shall submit an application for approval of the system he has established for the collection of those vehicles for which he has declared responsibility for placing on the market [or where the SoS has ascribed responsibility to him as required under paragraph 1 [----time period?].]]

(4) The system for collection referred to in paragraph 1 shall include a reference to the details of the network of authorised treatment facilities with which the producer has entered into agreements to accept delivery of those vehicles for which he has declared responsibility, [or for which the Secretary of State has ascribed responsibility to him] when they become end-of-life vehicles.

- (5) It shall be a requirement of any agreement referred to in paragraph 4 that –
- (a) where an authorised treatment facility accepts delivery of an end-of-life vehicle to which the agreement applies, no charge shall be imposed upon the last owner/holder upon delivery of an end-of-life vehicle to it;
 - (b) an authorised treatment facility which has agreed to form part of a producer’s network of authorised treatment facilities shall accept delivery of any end-of-life vehicle which is within the terms of that agreement that is delivered to it.
- (6) The requirements of paragraph 5 sub-paragraph (a) shall not apply where the end-of-life vehicle does not contain the essential components of a vehicle, in particular the engine, transmission, coachwork, wheels, and catalytic converter if part of the vehicle when it was placed on the market, or contains waste which has been added to it.

Capacity of a network of authorised treatment facilities

- 14.** The network of authorised treatment facilities established by a producer shall -
- (a) contain sufficient capacity to treat in accordance with the requirements of Article 6 and Annex I of the Directive that producer’s vehicles which are likely to become end-of-life vehicles
 - (b) comply with the requirements of regulation 16.

Accessibility of the network of authorised treatment facilities

15.—(1) Each producer shall ensure that the authorised treatment facilities within the network of facilities referred to in regulation 13, are reasonably accessible to any person who wishes to deliver an end-of-life vehicle to an authorised treatment facility within the network, in circumstances where that producer has made a declaration of responsibility under regulation 7 in respect of that vehicle.

(2) In order to establish if a producer has met his obligation in paragraph (1) the Secretary of State may take into account the criteria set out in Schedule 3.

(3) Notwithstanding the requirements of paragraph (1) a producer may make alternative arrangements for the delivery of end-of-life vehicles to his network of authorised treatment facilities provided they are at least as convenient for the last holder or owner of the vehicle as the requirements for delivery referred to in paragraph 1.

Requirements of the application for approval relating to a producer's treatment network

16. The application submitted by a producer to the Secretary of State shall—

- (a) be in writing [in the form specified in Schedule 4];
- (b) contain at least the information referred to in Schedule 4.
- [(c) be accompanied by a fee of £ ?]

Approval of a producer's application to establish a network of authorised treatment facilities

17. Approval of a producer's application for a network of authorised treatment facilities shall be granted where the Secretary of State is satisfied that the requirements -

- (a) of regulation [13] are met;
- (b) regulation [14] are met; and

(c) regulation [15] are met.

Revisions to a producer's application for approval of a network of authorised treatment facilities

18.—(1) The application submitted by a producer in accordance with the requirements of regulation [13] may be revised where —

(a) a producer is able to demonstrate to the Secretary of State that the treatment capacity and the accessibility of authorised treatment facilities to a person who wishes to deliver an end-of-life vehicle to the network is -

significantly more than is required, or

is inadequate; or

(b) the Secretary of State has reason to believe the treatment capacity [and accessibility to a person who wishes to deliver an end-of-life vehicle to a network]provided by a producer is inadequate and the Secretary of State shall notify the producer accordingly.

(2) Where the producer submits a revised application to the Secretary of State it shall be –

(a) made in writing at least six months before the beginning of the year in which the new plan would come into operation;

(b) form?

[(c) a fee?]

(3) The Secretary of State shall grant approval of a revised plan within 28 days of receipt of the application provided the requirements of regulation 16 have been met.

19. A producer who fails to-

(a) submit to the Secretary of State an application for approval of the system he has established for the collection of those vehicles for which he has declared responsibility for placing on the market [or for which the Secretary of State has ascribed responsibility to him] in accordance with the requirements of regulation 13;

(b) meet the requirements of regulation 14;

(c) meet the requirements of regulation 15;

(d) meet the requirements of regulation 16;

shall be guilty of an offence.

Authorised treatment facilities

20.-(1) No charge shall be imposed upon the last owner or holder of an end-of-life vehicle where an authorised treatment facility accepts delivery of a vehicle which has become an end-of-life vehicle which has been placed on the market by a producer who has not included that authorised treatment facility in his application for approval of the network of authorised treatment facilities submitted under regulation 13 .

(2) Notwithstanding regulation [13(5)] a producer shall not be liable for a vehicle which he has placed on the market and which has become an end-of-life vehicle, where that vehicle is delivered to an authorised treatment facility which is not part of the network of such facilities in the details he has submitted to the Secretary of State.

(3) For the avoidance of doubt, nothing in these Regulations or in the End-of-Life Vehicles Regulations 2003 shall prevent an authorised treatment facility from forming part of more than one network [of authorised treatment facilities] established by producers.

Enforcement

21. The Secretary of State shall enforce Parts III and IV of these Regulations.

PART V

RECOVERY AND RECYCLING TARGETS

Recovery and recycling targets

22.—(1) Every year each producer shall provide to the appropriate Agency information to demonstrate that he has attained the reuse and recovery targets in relation to end-of-life vehicles treated at the authorised treatment facilities in his network in the immediately preceding year as follows —

- (a) by 1 March 2007 [and thereafter 1 March each year] of—
 - (i) reuse and recovery of the weight of end-of-life vehicles of at least 85% by an average weight per vehicle;
 - (ii) reuse and recycling of the weight of end-of-life vehicles of at least 80% by an average weight per vehicle;

- (b) by 1 January 2015 [and thereafter 1 January each year] of—
 - (i) reuse and recovery of the weight of end-of-life vehicles of at least 95% by an average weight per vehicle;

(ii) reuse and recycling of the weight of end-of-life vehicles of at least 85% by an average weight per vehicle.

(2) Where a producer has not met the reuse and recovery targets referred to in paragraph 1 in a particular year he shall be responsible for providing to the appropriate Agency information setting out the reuse, recovery and recycling rates relating the end-of-life vehicles treated at the authorised treatment facilities in his network.

(3) As regards vehicles placed on the market before 1 January 1980 the reuse, recovery and recycling targets to be attained shall be for the purposes of paragraph -

(a) (1)(a) 75%; and

(b) (1)(b) 70%.

(4) Where an authorised treatment facility treats an end-of-life vehicle which it is not obliged to treat under an agreement with a producer as referred to in regulation [20] it shall provide the appropriate Agency with the information specified in paragraphs 1,2 and 3 as the case may be, in respect of end-of-life vehicles which it has treated.

(5) The following information shall be required to be provided to the appropriate Agency to meet the requirements of paragraphs (1),(2) and (3) –

(a)?

(b)?

Certificate of Compliance

23.-(1) A person shall furnish in accordance with this regulation a certificate of compliance to the appropriate Agency.

[(2) For the avoidance of doubt an authorised treatment facility shall furnish a certificate of compliance to the appropriate Agency where regulation 22(4) applies.]

(3) A certificate of compliance shall be furnished as evidence of whether the producer has complied with his reuse, recovery and recycling obligations which shall be furnished on [] each year.

(4) The provisions of Schedule 5 shall apply as regards the information to be contained in a certificate of compliance.

24. For the purposes of this Part of the Regulations the appropriate Agency means–

(a) where the producer’s registered office or principal place of business is in England or Wales, the Environment Agency ;

(b) where the producer’s registered office or principal place of business is in Scotland, the Scottish Environment Protection Agency;

(c) where the producer’s principal place of business is in Northern Ireland, the Department of the Environment;

(d) either the Environment Agency, Scottish Environmental Protection Agency or the Northern Ireland Department of the Environment where the producer does not have a registered office or principal place of business in the United Kingdom.

PART VI
THE SECRETARY OF STATE'S POWERS & DUTIES

Monitoring

25.—(1) The Secretary of State shall monitor in accordance with this regulation a producer compliance with the producer responsibility obligations in Parts III and IV of these Regulations.

(2) The duty referred to in paragraph (1) above includes a duty to monitor—

- (a) the registration of producers as required by regulation [7];
- (b) the application for approval of a network of authorised treatment facilities as required by regulation [13];
- (c) the accuracy of the information provided by producers and referred to in regulations [7(6) and 16] together with any changes notified in accordance with the undertakings referred to in regulation [11]; and
- (c) the accuracy of the information contained in certificates of compliance under regulation [23] .

Public Register

26.—(1) The Secretary of State shall maintain and make available in accordance with this regulation a register relating to the producers who register in accordance with regulation [7] and containing information relating to producer registration as prescribed in Schedule [1]

(2) The Secretary of State shall –

- (a) secure that the register is open for inspection at [its principal office] by members of the public free of charge at all reasonable hours; and
 - (b) permit members of the public to obtain copies of entries in the register on payment of reasonable charges.
- (3) The register may be kept in any form but shall be indexed and arranged so that members of the public can readily trace information contained in it.
- (4) The Secretary of State shall amend the relevant entry in the register to record any change to the information entered and shall note the date on which the amendment is made.
- (5) For the avoidance of doubt, nothing in this regulation shall require a register maintained by the Secretary of State to contain information relating to, or to anything which is the subject matter of, any criminal proceedings (including prospective proceedings) at any time before those proceedings are finally disposed of.
- (6) Nothing in this regulation shall require a register maintained by the Regulator to contain any information which has been superseded by later information after four years have elapsed from that later information being entered in the register.

Approval of persons to issue certificates of compliance

27. For the purposes of issuing the certificate of compliance the SoS may approve where the person in regulation 23 is -

- (a) an individual, that individual;
- (b) a partnership, a partner; or

(c) a company, a director of that company.

to issue a certificate of compliance in respect of that individual, partnership or company as the case may be.

Entry and Inspection

28. The [Secretary of State] may authorise in writing a person who he considers to be suitable for the purposes of her functions under these Regulations to exercise the powers of entry and inspection referred to in Schedule —

PART VII

OFFENCES

29- (1) A person who –

(a) fails to submit a certificate of compliance in accordance with the requirements of regulation [23];

(b) furnishes a certificate of compliance under regulation 23 and either –

knows the information provided in or in connection with the certificate to be false or misleading in a material particular;

(ii) furnishes such information recklessly and it is false or misleading in a material particular

- (c) fails without reasonable excuse to furnish any information required by the [appropriate Agency] in accordance with regulation 23(3); or
- (d) furnishes any information required by the appropriate Agency [or to the Secretary of State] in connection with their functions [powers and duties] under these Regulations and either –
 - (i) knows the information to be false or misleading in a material particular, or
 - (ii) furnishes such information recklessly and it is false or misleading in a material particular;

shall be guilty of an offence.

(2) Any person who imposes a charge on the last owner or holder of an end-of-life vehicle as a requirement of acceptance of the vehicle for treatment at an authorised treatment facility shall be guilty of an offence.

(3) Any person who intentionally delays or obstructs a person authorised by the Secretary of State in the exercise of the powers referred to in Part V1 of these Regulations shall be guilty of an offence.

Penalties

30. A person who is guilty of an offence under regulation –

(a) 7 (10);

(b) 19;

(c) 29;

shall be liable on summary conviction to a fine not exceeding the statutory maximum, on conviction on indictment, to a fine.

PART VIII

MISCELLANEOUS

Power of the Secretary of State to enter into agreements

31. – (1) For the purposes of implementing the detailed rules of Article 5(4) of the Directive the Secretary of State may enter into agreements with –

(a) one or more producers;

(b) organisations which represent the interests of the relevant producers; or

[(c) other economic operators].

(2) The Secretary of State shall not enter into an agreement unless she is satisfied that it will achieve one or more of the objectives set out in Article 1 of the Directive, that is to say –

(a) the prevention of waste from vehicles; and

(b) the reuse, recycling and other forms of recovery of end-of-life vehicles and their components so as to reduce the disposal of waste;

(c) the improvement in the environmental performance of all of the economic operators involved in the life cycle of vehicles especially the operators directly involved in the treatment of end-of-life vehicles.

Enforcement

32. –(1) Where a person who enters into an agreement with the Secretary of State under regulation [31] fails to comply with the terms of the agreement such failure shall be treated as if it is a breach of these Regulations, and that person shall be guilty of an offence.

(2) A person who is guilty of an offence under this regulation shall be liable on summary conviction to a fine [not exceeding the statutory maximum] or on conviction on indictment to a fine.

Amendments of the End-of-Life Vehicles Regulations 2003

33. (1) The End-of-Life Vehicles Regulations 2003⁶⁹ do not apply to three-wheel motor vehicles apart from the provisions in Part VII of those Regulations;

(2) With effect from [---] regulations 37 to 43 of the End-of –Life Vehicles Regulations 2003 shall cease to apply.

⁶⁹ S.I. 2003/2635

SCHEDULE 1

Regulation []

Information to be contained in an application for producer registration

1. The address and telephone number of the producer and where –
 - (a) the producer is a company, the registered office;
 - (b) the producer is not a company, the principal place of business.
2. The business name of the producer if different from that referred to in paragraph 1.
3. The address for service of notices on the producer if different from that referred to in paragraph 1.
4. The details of the person to whom the Secretary of State may address communications.
5. A description of the vehicles in respect of which the producer take responsibility for placing on the market, this may include a reference to –
 - (a) the make of vehicle;
 - (b) the model of vehicle; or
 - (c) the vehicle identification number.

AN INDICATIVE AND NON-EXHAUSTIVE LIST OF CRITERIA THE SECRETARY OF STATE MAY TAKE INTO ACCOUNT IN REACHING A DECISION UNDER REGULATION 8(3)(c)

The Secretary of State may take into account any of the criteria set out in paragraphs 1 to 5 in reaching a decision to ascribe responsibility for vehicles which have been placed on the market. The identity of any person who-

1. has manufactured the vehicle;
2. has put his name on the vehicle;
3. has placed the vehicle on the market;
4. uses or has used a trade mark or other distinguishing mark in relation to the vehicle;
- [5. has imported the product into a member State from a place outside the member States in the course of any business of his to supply it to another].

INDICATIVE AND NON-EXHAUSTIVE CRITERIA THE SECRETARY OF STATE MAY TAKE INTO ACCOUNT REGULATION UNDER REGULATION 15(1)

For the purposes of paragraph 1 the Secretary of State may take the following into account when considering whether the network of authorised treatment facilities meets the requirements of regulation 15(1):-

- (a) the number of vehicles which a producer anticipates may become end-of-life vehicles for the purposes of regulation 13(1);
- (b) the number of authorised treatment facilities within the producer's network of facilities;
- (c) the treatment capacity of each authorised treatment facility with which the producer has entered into arrangements to accept delivery of end-of-life vehicles;
- (d) the location of authorised treatment facilities in the producer's network of facilities referred to in regulation [-].

SCHEDULE 4

Regulation []

Requirements relating to a producer's network of authorised treatment facilities

1. The location and address of each authorised treatment facility with which the producer has entered into an agreement to treat vehicles and in respect of which he has made a declaration under regulation [7].
2. In relation to the authorised treatment facility referred to in paragraph 1 –
 - (a) the Environment Agency licence number;
 - (b) the number of depollution rigs installed on the site of the authorised treatment facility that are capable of treating vehicles for which that producer has declared or been ascribed responsibility;
 - (c) the depollution capacity of the sites with respect to vehicles for which that producer has declared or been ascribed responsibility.
3. Where there is a change in the depollution capacity of an authorised treatment facility (as referred to in paragraph 2(c)), the producer shall inform the Secretary of State.

SCHEDULE 5

Regulation []

Information in the certificate of compliance

The information to be contained in a certificate of compliance is as follows –

- (a) the name and address of the person who issues the certificate;
- (b) the name and address of the person in respect of whom the certificate is issued;
- (c) the date of the certificate;
- (d) the information provided by the relevant person to the appropriate Agency in accordance with regulation [];
- (e) [a statement by the person who issues the certificate that it has been issued in accordance with any guidance issued by the appropriate Agency statutory guidance issued by the Environment Agency, SEPA, N.I?]
- (f) certification by the person that he has complied with his reuse, recovery and recycling obligations.

SCHEDULE 6

Regulation [-]

The [SoS/ appropriate Agencies'] powers and duties

- (1) The powers which the SoS/appropriate Agency or a person authorised by [him/her] may exercise are –
 - (a) to enter at any reasonable time any premises which he has reason to believe it is necessary for him to enter;
 - (b) to make such examination and investigation as may in any circumstances be necessary;
 - (c) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (b);
 - (d) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (b);
 - (e) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
 - (f) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);

- (g) in the case of any such article or substance as is mentioned in paragraph (f) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely-
- (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations.
- (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (b) to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;
- (k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records –
- (i) which are required to be kept under these Regulations, or
 - (ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (b).
- and to inspect and take copies of, or of any entry in, the records;
- (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by these Regulations.

- (2) The powers which by virtue of paragraphs (1) and (4) above are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control enactments in the case of that authority is being, or has been, complied with shall include power, in order to obtain the information on which that determination may be made, -
- (a) to carry out experimental borings or other works on these premises; and
 - (b) to install, keep or maintain monitoring and other apparatus there.
- (3) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this section shall only be effected -
- (a) after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question, and
 - (b) either –
 - (i) with the consent of a person who is in occupation of those premises; or
 - (ii) under the authority of a warrant issued under Schedule 18 of the Environment Act.

SCHEDULE 7

Regulation []

Public Register

The following information shall be contained in the register in relation to a producer whose application for registration has been approved by the Secretary of State under regulation [7]-

- (a) the producer's name
- (b) the address of the registered office or principal place of business of the producer, and
- (c) a statement each year as to whether the producer has met his obligation under regulation [23] to furnish a certificate of compliance

ANNEX

Cabinet Office consultation criteria

The consultation criteria, as set out in the Cabinet Office Code of Practice on consultation:

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for consideration of responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure lessons are disseminated.

The complete code is available on the Cabinet Office's website, address www.cabinet-office.gov.uk/servicefirst/index/consultation.htm

COMMENTS OR COMPLAINTS

If you wish to comment on, or make a complaint about, the conduct of this consultation, please write to Mr P Martin, DTI Consultation Co-ordinator, Room 725, 1 Victoria Street, London SW1H 0ET or telephone him on 0207 215 6206 or e-mail philip.martin@dti.gov.uk