

Net Zero, Energy and Transport Committee
Tuesday 13 May 2025
17th Meeting, 2025 (Session 6)

UK subordinate legislation: consideration of consent notification

Introduction

1. This paper supports the Committee's consideration of a 'type 1' consent notification sent by the Scottish Government relating to the following proposed UK statutory instrument (SI):
 - Waste Electrical and Electronic Equipment (Amendment) Regulations 2025
2. The process for how the Scottish Parliament considers consent notifications is set out in the [SI Protocol](#). See **Annexe A** for further details.

The Waste Electrical and Electronic Equipment (Amendment) Regulations 2025

3. On 22 April, the Cabinet Secretary for Net Zero and Energy wrote to the Committee to give notice that the Scottish Government proposed to consent to this SI. Her letter is in **Annexe B** and the formal SI notification is in **Annexe C**. The notification states that the UK Government intends to lay the SI on 2 June with a coming into force date of 11 August. The Committee has been asked to respond by **26 May**.
4. The new SI will amend the [Waste Electrical and Electronic Equipment Regulations](#) 2013 in two key ways:
 - the term "producer" will include an "online market place" and;
 - a new category of equipment is created for vapes and electronic cigarettes to ensure that vape producers are responsible for waste disposal costs.
5. Both of these changes align with the overarching principle of extended producer responsibility (EPR) – which seeks to make producers responsible for the costs of waste management in relation to their products. Producer responsibility for Waste Electrical and Electronic Equipment (WEEE) is already well established on a UK-wide basis and the measures involved span a mixture of reserved and devolved areas.
6. The Committee was made aware of the forthcoming changes specifically in relation to vapes as part of its scrutiny of the Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024 last year (see paragraphs 82 to 93 of the [Committee's report](#)).
7. The notification indicates that these Regulations are part of a wider review of WEEE by the UK Government. A joint consultation between the previous UK

government, Scottish Government, Welsh Government and the Department of Agriculture Environment and Rural Affairs in Northern Ireland was undertaken on a number of proposed reforms to UK WEEE producer responsibility from Dec 2023-March 2024. The UK Government then [published a summary of consultation responses and its own response to them in December 2024](#). In it, the UK Government indicated that the SI now being proposed would be the initial action being taken to address perceived unfairness about how costs are distributed amongst producers. The response also indicated that the UK Government is considering other potential action, with a further update expected this year.

8. The EU is currently reviewing the WEEE Directive, having [consulted publicly on it](#). This is part of the EU package of work under the European Green Deal and Circular Economy Action Plan. The outcomes have not been published yet so changes are not imminent but EU standards may be likely to change in the near future. At the moment the UK is in alignment with EU standards but potential changes at EU level and the proposed reforms to the UK WEEE may raise questions about alignment/divergence in future, particularly given that these developments might not progress on the same timescales.
9. The key powers being used here to legislate in devolved areas can be used by UK Ministers only if the Scottish Ministers consent. These powers are available to either the UK Ministers or Scottish Ministers (known as “concurrent”). The notification gives the following reason for proposing consent to the UK SI:

“The SI makes key amendments to the WEEE Regulations that will enhance the current system. As the existing WEEE Regulations are made using a UK SI, the Scottish Government considers a UK SI to be the best course of action for supporting consistency with the existing regulatory landscape and across the UK. We anticipate that other devolved governments will follow the same course of action.”

Next steps

10. If the Committee wishes to approve the proposal to consent to the SI, it may, in doing so, set out in its letter to the Scottish Government any observations or concerns that it thinks are relevant.
11. If the Committee is not content with the proposal, it should include in its letter to the Scottish Government one of the following recommendations:
 - That the Scottish Government should not consent to the provision being made in a UK SI and that the Scottish Government should instead take forward an alternative Scottish legislative solution; or
 - That the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution).

NZET/S6/25/17/4

**Clerks to the Committee
May 2025**

Annexe A: Process for parliamentary scrutiny of consent notifications in relation to UK statutory instruments

1. The Protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain subordinate legislation made by the UK Government: specifically, UK Government subordinate legislation on matters within devolved competence in areas formerly governed by EU law. It sets out a proportionate scrutiny approach and categorises SI notifications as 'type 1' or 'type 2'.
2. Type 2 applies where all aspects of the proposed instrument are clearly technical (e.g., they merely update references in legislation that are no longer appropriate following EU exit) or do not involve a policy decision. These are notified retrospectively, after the Scottish Government has given its consent.
3. All other proposals are type 1. In this case, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making subordinate legislation in this way. Each type 1 notification must be considered by the relevant Committee.
4. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making Regulations within devolved competence, in the manner that the UK Government has indicated to the Scottish Government.**
5. If Members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may also wish to note any issues in its response or request that it be kept up to date on any relevant developments.
6. If the Committee is not content with the proposal, however, it may recommend that the Scottish Government should not give its consent. In that event, the Scottish Ministers have 14 days under the Protocol to respond to the Committee's recommendation. They could—
 - Agree. If so, the Scottish Ministers would then withhold their consent.
 - Not agree. If so, the Parliament will debate the issue.
7. If the Parliament agrees to the Committee's recommendation that the Scottish Ministers should not consent, the Protocol provides that the Scottish Ministers should "normally not consent" to the UK SI. However, the Protocol also provides that if the Scottish Ministers consider that the Committee's proposed alternative cannot be achieved, they may consent to the UK SI. If so, they must explain why they are doing so to the Scottish Parliament.

Annexe B: Correspondence from the Cabinet Secretary for Net Zero and Energy – 22 April 2025

Dear Edward,

The Waste Electrical and Electronic Equipment (Amendment) Regulations 2025

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the then Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the Waste Electrical and Electronic Equipment (Amendment) Regulations 2025 which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and they are not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The Waste Electrical and Electronic Equipment (Amendment) Regulations 2025, aim to strengthen the producer responsibility obligations of internet sellers to ensure they are properly funding the collection, treatment and recovery of the electrical and electronic equipment that they place on the market in the UK originating from non-UK suppliers, and to create a new category of electrical and electronic equipment for vapes, to ensure vape producers are paying their fair share of the waste treatment costs for vapes, which intersects with devolved policy and will apply to Scotland. Full details are set out in the Notification to the Scottish Parliament.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you by 26th May 2025.

Yours sincerely,



GILLIAN MARTIN

Annexe C: Notification to the Scottish Parliament

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Waste Electrical and Electronic Equipment (Amendment) Regulations 2025

Type 1 Notification

A brief overview of the SI (including reserved provision).

The Waste Electrical and Electronic Equipment (Amendment) Regulations 2025, makes amendments to Waste Electrical and Electronic Equipment Regulations 2013 (“the WEEE Regulations”).

Waste electrical and electronic equipment (WEEE) refers to electrical and electronic equipment (EEE), that is products that depend on electrical currents or electromagnetic fields to work properly, once those products become waste.

A producer responsibility system for WEEE has existed in the UK since 2007 and is currently provided for by the WEEE Regulations. These regulations establish an extended producer responsibility scheme for WEEE with the aim to reduce the environmental impact of WEEE by placing obligations on producers (other than small producers) to contribute to the financial cost of managing their products once they become waste, and by mandating separate collection of WEEE by way of take back and designated collection facilities to ensure the proper treatment, recovery and disposal of WEEE. The WEEE regulations also provide for record-keeping obligations, annual collection targets, and include measures to promote consumer awareness to ensure sustainable management of WEEE, including labelling.

This instrument maintains alignment with European Parliament and Council Directive 2012/19/EU on waste electrical and electronic equipment (WEEE) (“the WEEE Directive”), which was implemented in the UK by the WEEE Regulations, and extended scope of the regulations to take account of a wider range of products than the preceding Waste Electrical and Electronic Equipment Regulations 2006.

The WEEE Regulations are therefore secondary assimilated law. This instrument provides for key amendments to the WEEE Regulations to address existing challenges within the current system. This instrument will:

- a. Amend the definitions of producer to include an “online market place” operator and provide that an “online marketplace operator” is an “OMP producer” in respect of EEE originating from a non-UK supplier and subject to producer obligations under the WEEE Regulations;
- b. Create a new separate category for vapes and electronic cigarettes under the WEEE Regulations, which will ensure that producers are meeting the costs of disposal for their products.

In keeping with the WEEE Regulations and its predecessor Regulations, this instrument is a UK wide instrument, which allows for consistency in regulation across the whole of the UK and also for the inclusion of labelling provisions which are within reserved competence. The instrument remains consistent with the objectives and requirements of Directive 2012/19/EU and takes into account changes in market conditions (the development and growth of online marketplaces, and the growth of the vapes industry with associated high waste management costs).

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Details of the provisions that Ministers are being asked to consent to.

Summary of the proposals

These proposed changes update the EEE Regulations to more accurately reflect two key groups and ensure that they are appropriately obligated under the regulations; online marketplace sellers supplier EEE from a non-UK supplier and vape producers.

The instrument will strengthen the existing producer responsibility system for WEEE by addressing the imbalance in obligations and enforcement in relation to UK based producers distributing EEE in the UK by way of traditional sellers and online sellers distributing EEE in the UK from non-UK based suppliers. Currently overseas producers, who utilise an online market place to sell EEE to private households within the UK are not within scope of the WEEE Regulations. The provisions relating to OMPs will ensure that this gap is addressed by making OMP operators obligated producers under the WEEE Regulations, therefore contributing to the cost of collection, treatment and recovery of the electrical and electronic equipment that they place on the market, which has originated from a supplier out with the United Kingdom.

This instrument also establishes a new category of electrical and electronic equipment for vapes under schedule 3 of the WEEE Regulations, that will ensure vape producers are paying the higher costs associated with proper treatment and recycling of their products. A full summary of the amendments is set out below.

Part 1

Part 1 sets out that these regulations may be cited as the Waste Electrical and Electronic Equipment (Amendment) Regulations 2025. It provides that the regulations will enter into force 21 days after they have been made, which based on the current timeline will be the 11th August 2025 and that they extend to England, Wales, Scotland and Northern Ireland.

Part 2

This part makes various amendments to the WEEE Regulations, including amending the definition of “producer” to include online market place operators in respect of EEE distributed in the UK from overseas supplier (an “OMP producer”), and it establishes a new category under the regulations for vapes and electronic cigarettes.

To discharge their obligations under the WEEE Regulations, OMP producers will be required to join a producer compliance scheme (PCS) or, where applicable, register as a small producer. Part 2 of this instrument also provides for amendments to reporting requirements and to obligate a PCS to provide data in relation to EEE placed on the market which originates from an overseas supplier.

Part 2 also provides for the creation of a new category for vapes and e-cigarettes in schedule 3 of the WEEE Regulations, with types of these products added to schedule 4 and these devices then included as a separate stream within the definition of “WEEE collection stream”. Currently these products are categorised within category 7, which comprises of toys, leisure and sports equipment with the higher costs associated with proper collection and treatment of vape products apportioned amongst all category 7 producers, resulting in increased fees for producers of other products within this category. The amendment will ensure that vapes producers are paying fair and proportionate fees for the management of vapes when they become waste, with producers of other category 7 producers paying fees based on what they place on the market.

Part 3

Part 3 provides for transitional provisions for the implementation of the obligations set out in Part 2 for OMP operators and in respect of the new vapes category.

EU Alignment

The Waste Electrical and Electronic Equipment Directive 2012/19/EU aims to reduce the environmental impact of electrical and electronic equipment when it becomes waste, by setting various requirements in relation to all EEE placed on the European Market, including for the collection and treatment of EEE when it becomes WEEE. Member states are required to take measures to reduce e-waste and promote sustainable product design, including the use of producer responsibility schemes to ensure that EEE producers bear the costs of disposing of their products when they become waste, implement requirements relating to the proper treatment of WEEE, ensure separate collection of WEEE and the setting of collection and recovery targets.

The Waste Electrical and Electronic Equipment Directive 2002/96/EC was initially implemented in the UK by the Waste Electrical and Electronic Equipment Regulations 2006. The 2002 Directive was subsequently replaced by the WEEE Directive, to account for a wider range of products and this Directive was implemented in the UK via the WEEE Regulations.

The WEEE Regulations 2013 are therefore assimilated secondary law. This instrument seeks to make amendments to the 2013 regulations, that will address key challenges in the existing regulations. Specifically ensuring producers, including online market places supplying EEE from non-UK suppliers meet their obligations in

respect of EEE placed on the UK market and ensuring that vape producers pay the correct contribution for treatment and recycling of vapes.

This is a UK wide instrument, which is in keeping with the WEEE Regulations, This reflects the UK-market for EEE, supports consistency in the regulatory approach of the UK and also that certain provisions to do with labelling are within reserved competence. Whilst the WEEE Directive does not include vapes as a separate category or expressly require that OMP marketplaces are required to participate in producer responsibility schemes it is in keeping with the overall principles and requirements of the Directive, and the WEEE Regulations as amended by this instrument remain aligned with the WEEE Directive 2012/19/EU.

Does the SI relate to a common framework or other scheme?

The Scottish Government have worked closely with Department for Environment, Food and Rural Affairs, The Welsh Government and the Department of Agriculture, Environment, and Rural Affairs in Northern Ireland on development of the proposed amendments. It is a joint four nation commitment under the Resources and Waste Common Framework.

Summary of stakeholder engagement/consultation

The four nations collectively published a consultation and call for evidence relating to reform of the WEEE system on 28th December 2023 . The consultation was open between 28th December 2023 and 7th March 2024 and received 320 responses.

The consultation contained five policy proposals, however following the UK general election, the new UK Government is taking a fresh approach to the reform of WEEE and this instrument only addresses the two most immediate proposals within the consultation.

In relation to the proposals being taken forward by this instrument namely, to place obligations on online market places and introduce a new category for vapes. Respondents were supportive with 87% of respondents agreeing with proposals to require OMPs to fulfil producer obligations on behalf of overseas sellers and 91% supporting proposals to introduce a new category for vapes.

No further consultation has been carried out.

A note of other impact assessments, (if available)

The Scottish Government has published a partial Business and Regulatory Impact Assessment¹ in relation to this instrument.

¹ [2.0 Policy intent and rationale - Waste electrical and electronic equipment reform consultation: business and regulatory impact assessment - partial - gov.scot](#)

No further impact assessments have been produced in relation to this instrument. As this relates to a UK wide instrument, it is for UK Government to publish associated impact assessments. They have determined that this is not required as no, or no significant, impact on the private, voluntary or public sector is foreseen.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The WEEE Regulations support sustainable and environmentally responsible management of WEEE in the UK. These regulations support delivery of the Scottish Government's net-zero and circular-economy objectives.

This instrument brings forward amendments that will correct an imbalance in obligations and enforcement between online market place operators supplying EEE from non-UK suppliers and traditional producers and retailers, ensuring that all those who place EEE on the UK market meet their obligations.

It also creates a new category for vapes supporting vape producers to pay proportionate costs for the proper treatment and recycling of their products, as well as reducing the disproportionate burden placed on producers within the toys, leisure and sports equipment category under the current regulations.

The SI makes key amendments to the WEEE Regulations that will enhance the current system. As the existing WEEE Regulations are made using a UK SI, the Scottish Government considers a UK SI to be the best course of action for supporting consistency with the existing regulatory landscape and across the UK. We anticipate that other devolved governments will follow the same course of action.

Intended laying date (if known) of instruments likely to arise

Monday 2nd June 2025

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

N/A – The Scottish Parliament will have 28 days to scrutinise this proposal.

Information about any time dependency associated with the proposal

The UK Government have set a proposed laying date of the 2nd June 2025. In order to ensure that transitional data collection requirements are in force, ahead of full implementation in 2026, it is crucial that these regulations come into force on the planned 11th August date.

The UK Government has requested confirmation of Scottish Ministers consent by 26th May

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

The four governments have established a programme structure to oversee reform of the WEEE system. Wider reform work will be explored by the UK governments Circular Economy Taskforce. Any issues with this amending SI may be escalated to the Resources and Waste Common Framework.

Any significant financial implications

There are no significant financial implications for the Scottish Government. There may be additional costs to business to ensure compliance however, these are not significant and as set out above there is no, or no significant, impact on the private, voluntary or public sector.