

House of Commons
Environment, Food and Rural
Affairs Committee

**DISPOSAL OF
REFRIGERATORS**

Fourth Report of Session 2001–02

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*Report, together with
Proceedings of the Committee,
Minutes of Evidence and Appendices*

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The Environment, Food and Rural Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Environment, Food and Rural Affairs and its associated public bodies.

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No.152. These are available on the Internet via www.parliament.uk. The Committee has the power to appoint two Sub-committees.

The Committee agreed on Wednesday 30 January 2002 that it would nominate a Disposal of Refrigerators Sub-committee to undertake this inquiry.

Current Membership

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 Mr Mark Todd (*Labour, South Derbyshire*) *

* These Members were nominated as members of the Sub-committee. Mr Michael Jack was the Chairman of the Sub-committee.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/commons/selcom/efrahome.htm.

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by the date of the relevant volume with its House of Commons Paper number, followed by 'Q' and the question number. References to written evidence are indicated by the date of the relevant volume with its House of Commons Paper number, followed by the page number.

TABLE OF CONTENTS

	<i>Page</i>
REPORT	5
Summary	5
Introduction	5
Background	7
Interpretation of Regulation (EC) No. 2037/2000	9
Parliamentary scrutiny	9
Drawing up the Regulation	10
Interpretation	11
Export	14
Retailers and the Waste Disposal Industry	15
Local authorities	16
The cost of the regulation	17
The Role of Officials and Ministers	17
Lessons learned	18
Conclusions and recommendations	23
 PROCEEDINGS OF THE DISPOSAL OF REFRIGERATORS SUB-COMMITTEE RELATING TO THE REPORT	 25
PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT	28
LIST OF WITNESSES	31
LIST OF MEMORANDA INCLUDED IN THE MINUTES OF EVIDENCE	32
LIST OF APPENDICES TO THE MINUTES OF EVIDENCE	32
UNPRINTED MEMORANDUM	33
 MINUTES OF EVIDENCE	 Ev 1



Figure 1.

(Source: MeWA Recycling, Maschinen und Anlagenbau GmbH, Gechingen, Germany)

Technical Process

1. Refrigerators fed in on a conveyor belt (no diagram) in loads of five to eleven refrigerators.
2. Chain belt conveyor, housed for emission-free feeding of the refrigerators into the treatment process.
3. Handed over from the load lock to the cross-cut grinder. The proportion of oxygen in the load lock and the following stages remains controlled at less than 5 per cent.
4. Single stage mechanical processing in the cross-cut grinder. Separation of the material composites. Separation effectiveness is greater than 99 per cent. Shredded into material-specific grain sizes, dependent on properties of the materials. Grain size ranges from 0.1mm to 100mm.
5. Discharge buffer with safety sieve. A plunger forces the flow of material in the form of a lightly compressed plug into the following drying stage.
6. Enclosed drying stage to reduce moisture in the material.
7. Sieving of the polyurethane powder. Grain size ranges from 0.1mm to 0.8mm.
8. Release of the remaining vapour from the polyurethane powder, with a CFC content of less than 0.5 w/w per cent.
9. Iron removal from the mixture of grained/sieved material.
10. Non-ferrous metal removal. Ejection of non-ferrous fraction. Purity is more than 95w/w per cent. According to variations in execution, separation of aluminium and copper fractions are possible at more than 99 w/w per cent.
11. Polyurethane fraction emptied into bags.
12. Ejection of the iron fraction. Purity greater than 99.9 w/w per cent.
13. Ejection of plastic fraction. Purity greater than 95 w/w per cent.
14. Cryo-condensation equipment for liquefaction of CFCs in a temperature range of 100°C to 160°C.
15. Storage tank for liquid nitrogen to create extremely low temperatures (CFC condensation) and an atmosphere low in oxygen.

FOURTH REPORT

The Environment, Food and Rural Affairs Committee has agreed to the following Report:

DISPOSAL OF REFRIGERATORS

SUMMARY

This inquiry was undertaken by the Environment, Food and Rural Affairs Select Committee in the light of reports circulating towards the end of 2001 that the UK was ill-equipped to implement a new EU Regulation on Ozone Depleting Substances, and building up as a result were what were described as 'fridge mountains'. The Committee has investigated why it took so long for the United Kingdom to acknowledge that the Regulation related not only to CFC-based liquid coolant in refrigerators, but also to ozone depleting substances contained in foam insulation panels. Finally it has looked at issues relating to the cost and investment that will have to be made in order that the UK can comply fully with the Regulation and dispose of old refrigerators in a cost-effective and safe manner.

Introduction

1. Some 2.5 to 3 million domestic refrigerators are discarded annually in the UK. Until January 2002 approximately 40 per cent of these were exported for re-use, principally to developing nations in West Africa. A further 15 per cent were reconditioned for the domestic second-hand trade. The remainder, once the liquid chlorofluorocarbons (CFCs) in their cooling systems had been removed, as required by Council Regulation (EC) 3093/94¹, were either crushed in fragmentation plants and the metal recycled, or disposed of in landfill sites.

2. On 1 January 2002 the rules for the export, disposal and recycling of refrigeration equipment changed across the European Union. They must be disposed of either by high temperature incineration or using specialist recycling equipment which "captures" CFCs rather than releasing them into the atmosphere (see Figure 1). Foam impregnated with CFCs is generally present in the cabinets and doors of fridges produced before 1996. It can comprise as much as two thirds of the ozone depleting substances in a refrigerator. In order to prevent such substances escaping into the atmosphere, old fridges can no longer be exported or sent to land-fill. But no specialist recycling equipment was available in the UK on 1 January 2002. Facilities for incineration were available at only two sites, capable of disposing of a total of 8,000 refrigerators per week.

3. Retailers of white goods have ceased their long-standing practice of removing old appliances when delivering new ones (so called 'take-back' schemes) because, since they cannot sell them on for export, reconditioning and resale or for scrap, it is no longer profitable. As a result the UK has seen in recent months the appearance of 'fridge mountains' at amenity sites across the country. Fly-tipping of redundant fridges has increased. Local authorities have introduced charges to take old fridges away to meet additional storage costs.

¹ Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer.

TIMETABLE OF PRINCIPAL EVENTS RELATING TO REGULATION 2037/2000	
1998	
September	DETR consults with stakeholders on draft Regulation. DETR lays Explanatory Memorandum to the draft Regulation before Parliament.
November and December	Austrian Presidency of the EU amends draft Regulation.
December	Draft Regulation Cleared by Select Committee on European Legislation. Environment Council of the European Union reaches political agreement on the draft Regulation.
1999	
January	Issue of foam raised in EC Regulation 3093/94 ² Management Committee.
February	Common position on draft Regulation reached by Environment Council of the European Union.
2000	
June	Regulation adopted by European Parliament and Environment Council.
September	Biffa ^{3,4} writes to DTI about new recycling equipment.
October	Article 11 of the Regulation comes into force.
November	Dixons writes to Environment Minister expressing concerns.
December	Dixons writes to DETR officials expressing concerns.
2001	
March	Biffa writes to Environment Agency about investment in recycling equipment.
June	EC Regulation 2037/2000 Management Committee clarifies position on CFC bearing foam to UK satisfaction.
October	DEFRA informs local authorities of requirements of the Regulation.
December	DEFRA announces £6 million for storage costs incurred by local authorities.
2002	
January	Article 16 of the Regulation comes into force.
March	First mobile fridge recycling plant operates in UK.
April	Environment Minister tells Select Committee that the cost of processing the backlog of fridges might be £40 million.

² Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer was replaced by Regulation (EC) No 2037/2000 of the European Parliament and of the Council of 29 June 2000 on substances that deplete the ozone layer, which entered into force on 1 October 2000.

³ Biffa Waste Services Ltd is of the large waste management companys operating in the United Kingdom.

⁴ Memorandum submitted by Biffa Waste Services Ltd, Ev 50.

4. We decided to appoint a Sub-committee to undertake an inquiry into the issues relating to the disposal of refrigerators,⁵ and announced our inquiry in a press notice issued on 7 February 2002.⁶ The terms of reference for the inquiry were:

To consider the effects of European Council Regulation 2037/2000 on Ozone Depleting Substances on the disposal of refrigeration units since 1 January 2002; and to analyse the Government's preparations for the coming into force of the Regulation.

5. In response to our invitation to submit written evidence we received fourteen written memoranda. In addition, we held three oral evidence sessions in March and April 2002, hearing from representatives of the Local Government Association and the Dixons Group plc, witnesses from Biffa Waste Services Ltd and the Directorate General, Environment of the European Commission, and the Minister for the Environment, Rt Hon Michael Meacher MP, and officials from the Department for Environment, Food and Rural Affairs (DEFRA).⁷ We also discussed the matter with UKRep officials and representatives of the European Commission during a visit to Brussels in February. We wish to thank all those who gave evidence, either orally or in writing, or otherwise assisted us in our inquiry.

Background

6. The recent difficulties experienced in relation to the disposal of refrigerators are the result of the introduction of Regulation (EC) No 2037/2000 of the European Parliament and of the Council on substances that deplete the ozone layer. Regulation 2037/2000, which replaced Council Regulation (EC) 3093/94 on substances that deplete the ozone layer,⁸ was adopted by the European Parliament and the Council of the European Union on 29 June 2000 and came into force on 1 October that year. Paragraph 2 of Article 16 of the Regulation stipulates that "Controlled substances contained in domestic refrigerators and freezers shall be recovered and dealt with as provided for in paragraph 1 after 31 December 2001." A Council Regulation, once agreed, has "general application ... It shall be binding in its entirety and directly applicable in all Member States".⁹ In other words, a Regulation becomes part of the law of the Member States without any further steps being taken or necessary to make the Regulation part of national law.

7. It is supposed to be implemented in the same way by all Member States. The House of Commons European Scrutiny Committee considered the then draft Regulation on 13 November 1998,¹⁰ and then again on 23 December 1998,¹¹ when it was approved.

8. The United Kingdom is party to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. The Protocol was implemented in the European Community by EC Regulation 3093/94. The Regulation provided for controls on the production of all ozone-depleting substances other than the production of hydro chlorofluorocarbons (HCFCs).

9. On 20 August 1998 the Commission forwarded to the Council its proposal for a Council Regulation to replace the 1994 Regulation. The draft Regulation was intended to give effect to the changes made in 1995 and 1997 to the Protocol [see above], and to take

⁵ List of Members serving on the Disposal of Refrigerators Sub-committee is on page 2.

⁶ The press notice can be viewed on our website, at <http://www.parliament.uk/commons/selcom/efrapnt15.htm>.

⁷ List of Witnesses appearing before the Disposal of Refrigerators Sub-committee is on page 31.

⁸ Council Regulation (EC) No 3093/94 of 15 December 1994 on substances that deplete the ozone layer.

⁹ Treaty establishing the European Community, Ch. 2 Provisions common to several institutions Article 249 (ex Article 189).

¹⁰ Thirty-Eighth Report of the House of Commons Select Committee on European Legislation, Session 1997-98, HC 152-xxxviii.

¹¹ Fourth Report of the House of Commons Select Committee on European Legislation, Session 1998-99, HC 34-iv.

into account technical progress in developing alternatives. The major changes were over the timing and means of phasing out HCFCs, and an earlier phasing out of methyl bromide. The draft also included a ban on export of ODSs, agreed at the September 1997 Montreal meeting, and new provisions on the recovery of such substances, in an Article [then article 15] entitled “*Recovery of used controlled substances*”.

10. In short, the Regulation seeks to put in place legislation to meet commitments made by the United Kingdom and others in the Protocol and the subsequent adjustments and amendment: as the Government noted in the Explanatory Memorandum on the draft Regulation it submitted to Parliament on 25 September 1998, “although we may wish to alter some of the detailed proposals made by the Commission, the proposed Regulation is broadly in line with the Government’s policies for the protection of the ozone layer”.¹²

11. Two Articles of Regulation 2037/2000 are of particular significance. Article 11 is concerned with the export of ‘controlled substances’, which include the HCFCs and CFCs contained in refrigerators. Under the provisions of the Article the export of these substances from the European Community is prohibited. Article 16 of the Regulation (originally numbered Article 15) deals with the recovery of controlled substances, particularly from domestic refrigerators and other installations. It is in the interpretation of Article 16 that difficulties have arisen.

12. On 31 January 2002, Mr Meacher, the Minister for the Environment, told the House at Question Time that the UK had been unprepared for the introduction of the Regulation because of delays in receiving clarification from the European Commission about the interpretation of the Regulation:

“In this case, an EC regulation drafted in 1998 required the extraction of CFCs from the coolant gases in fridge motors, but not from insulation foam. However, just before the regulation came to the Environment Council in 1999, a change to Article 15 caused uncertainty as to whether it applied to insulation foam.

“From that point, late in 1999, my officials made repeated requests to the Commission for formal clarification of that article, and I have a record of every such instance. We did not get a formal reply until June 2001. We were badly let down by the Commission, and that is not the way in which EU legislation should be passed. However, since we finally found out about insulation foam in June 2001, we have taken every step to resolve the matter as quickly as possible”.¹³

13. The Minister subsequently wrote to us about the matter, explaining that “the first note I received [from his officials] about the problems caused by the Regulation regarding the recycling of fridges in the UK was in July 2001, which explained the effects of the Commission’s interpretation of Article 16. This advice made clear that the interpretation could lead to significant additional costs and that it was unlikely that facilities would be in place before January 2002”.¹⁴ *It is the delay in putting those facilities in place, together with the ceasing of exports of old refrigerators and the end of “take-back schemes by retailers, which have given rise to the ‘fridge mountain’.*

¹² Proposal for a Council Regulation (EC) on substances that deplete the ozone layer (981C 286/06) COM/98/0398 final – 98/0228 (SYN).

¹³ HC Deb, 31 January 2002, cols 413-4.

¹⁴ Supplementary memorandum submitted by DEFRA, Ev 123.

Interpretation of Regulation (EC) No. 2037/2000

Parliamentary scrutiny

14. The DETR laid an Explanatory Memorandum before the House on 25 September 1998. In its Report of 28 October 1998, the Select Committee on European Legislation reported its assessment of the proposal as politically important, but declined to clear it until further information on two specific issues — HCFCs and methyl bromide — had been provided. A Supplementary Explanatory Memorandum of 3 December 1998 set out the latest position on these issues, and attached the recently completed Regulatory Impact Assessment (RIA). It recorded that, following negotiations at official level, the [Austrian] Presidency hoped to reach a common position at the 21 December 1998 Council. In its 23 December 1998 Report, the Committee cleared the proposal.¹⁵ At this time no common position in the Council existed.

15. **The European Scrutiny Committee may of course itself wish to review any lessons for the scrutiny system arising from this episode, and in particular the adequacy of the two Explanatory Memoranda (EM) provided.** *We note that these failed to highlight the potential impact of the proposed export ban. More significantly, the Supplementary EM of 3 December 1998 made no reference to the implications of the changes proposed by the Presidency in November 1998 to the then Article 15. Given that, and the Department's own ignorance and uncertainty, it is not easy to see what more could have been done by way of parliamentary scrutiny, dependent as it must be on full briefing from departments. This should include hearing representations from affected groups and organisations.*

16. **We are particularly concerned at the breakneck speed at which the draft was propelled through by Parliament in the autumn of 1998.** Only 3 weeks in September 1998 was allowed for the consultation with stakeholders. *It is scarcely surprising that important aspects of the Regulation were overlooked or imperfectly understood, and that barely 20% of those consulted by the Department responded.*¹⁶ Negotiation on the Regulation then proceeded within the Council and with the EP for months and months, and the Regulation was not finally agreed until the middle of 2000. So far as we know, the points now at issue- the significance of the export ban and the need to remove foam from domestic fridges- were not raised during scrutiny by the European Parliament either. **We hope that the European Parliament too may wish to review how well its scrutiny mechanisms worked in relation to this document.**

Drawing up the Regulation

17. DEFRA's written evidence to us states that "negotiations at official level took place in the Environment Working Group of the Council [made up of "attachés" from Member States' permanent representations accompanied by national experts plus representatives of the Commission] and the Committee of Permanent Representatives (COREPER); negotiations at Ministerial level took place at the Environment Council. The Council reached political agreement on the Regulation on 20-21 December 1998 and a Common Position was adopted on 23 February 1999. Since the Common Position differed from the European Parliament's first reading opinion, the proposal was returned to the European Parliament for second reading. Following conciliation between the EP and the Council, the Regulation was finally adopted by the two institutions on 29 June 2000".¹⁷

¹⁵ Fourth Report of the House of Commons Select Committee on European Legislation, Session 1998-99, HC 34-iv.

¹⁶ Draft Council Regulation on substances that deplete the ozone layer COM(98) 398 – Supplementary Explanatory Memorandum of 3 December 1998.

¹⁷ Memorandum submitted by DEFRA, Ev 98, Para 11.

Article 15 of the draft Regulation of August 1998, which dealt with recovery of used controlled substances and made specific reference to rigid foams, read:

[Controlled substances] contained in:

- Refrigeration equipment and air-conditioning equipment,
- Equipment containing solvents,
- Fire protection systems and fire extinguishers, and
- Rigid foams

Shall be recovered if practicable for destruction by technologies approved by the Parties or by any other environmentally acceptable destruction technology, or for recycling or reclamation during the servicing and maintenance of equipment or before the dismantling or disposal of equipment.

18. In November 1998, the Austrian Presidency proposed an amendment to this Article. In December 1998, the Presidency circulated a further revised text of the same Article. This was intended to clarify and expedite implementation. We note, however, that Austria and several other European States have not yet implemented the Regulation in full.

19. The effect of the November 1998 amendment would have been to make recovery of controlled substances from the specified equipment mandatory, rather than "if practicable", but it excluded domestic refrigeration, and removed the specific reference to rigid foams. The effect of the further December 1998 amendment was to introduce mandatory recovery from domestic refrigeration equipment with effect from 1 January 2002, but still with no specific reference to foams.

20. It is not surprising that these changes to the text of the regulation should have caused some confusion. In fact the written memorandum from DEFRA states: "The issue of removal of CFCs from insulating foam in fridges was not raised until January 1999, after Ministers had reached political agreement, because of lack of clarity caused by the changes."¹⁸ *The fact remains that the purpose of the Regulation was to minimise ozone depleting substances, and since the foams concerned contained more of these than the CFC coolants in fridges, recovery was desirable*, making it very surprising that the Commission did not immediately clarify this issue and indicate at that stage its view that removal of foam containing CFCs should be mandatory.

21. As is usual a Management Committee was established, comprising officials from the European Commission and from member states. The purpose of the Management Committee was to discuss the interpretation of the Regulation.

22. More than one Government department in the United Kingdom was involved in the process of drawing up and then interpreting the Regulation. Officials from the former Department of the Environment, Transport and the Regions (DETR) took lead responsibility for negotiations on the draft Regulation, "in consultation with officials from the Department of Trade and Industry (impacts on business and trade issues), HM Customs

¹⁸ Memorandum submitted by DEFRA, Ev 99, para 16.

and Excise (import and export), the Ministry of Defence (phasing out of controlled substances used in military equipment and installations), the Home Office (specialised uses by the police), Department of Health (use of CFCs in medical devices), and the former Ministry of Agriculture, Fisheries and Food (supply and use of methyl bromide)".¹⁹

23. At meetings of the Management Committee, we were told, "DEFRA used to take the lead; sometimes there would be some consultation with the Department of Trade and Industry, sometimes the Department of Trade and Industry would make a comment to the Committee about a particular area".²⁰ Despite the consultations between Government departments mentioned, we were not aware that representatives of HM Customs and Excise attended Management Committee meetings, which might account for the fact that at the meeting of 25 October 2000, the Department of Trade and Industry and DEFRA made it known that they had previously been unaware of the export trade of between 1 and 1.5 million domestic refrigerators per year from the UK.²¹ We therefore find it surprising that Customs and Excise which had already been warning exporters that the export trade would be stopped had neither told other departments of this nor indicated the scale of the trade lost, something of which the Department of Trade and Industry should also have been well aware. We are surprised that such a substantial export business could be so casually treated by DTI and Customs and Excise who had not passed on the information.

Interpretation

24. Concern in the United Kingdom Government about the full implications of the Regulation apparently began to grow. In an attempt to clarify those implications correspondence began to pass between DEFRA, and its predecessor Departments, and the European Commission:

"In 1998, the original European Commission proposal for a regulation on substances that deplete the ozone layer (ODS) did not require the recovery and recycling of ODS from the refrigeration equipment unless it was 'practicable'. An amendment to the article on recovery in the draft regulation was agreed in February 1999 at the EC Environment Council meeting. Between February 1999 and mid-2001, UK officials repeatedly asked the Commission for formal clarification of the position of ODS in the insulating foam of refrigeration equipment. The occasions on which this was raised by the UK and other member states, either directly or implicitly during discussion of items for clarification, are as follows:

EC Regulation 3093/94 Management Committee meeting, 23 February 1999;
 EC Regulation 3093/94 Management Committee meeting, 11 October 1999;
 EC Regulation 3093/94 Management Committee meeting, 1 March 2000;
 Margins of the Montreal Protocol meeting in Geneva, July 2000;
 DETR letter to European Commission dated 11 September 2000;
 EC Regulation 2037/2000 Management Committee meeting, 4–6 October 2000;
 DETR letter to European Commission dated 30 January 2001;
 EC Regulation 2037/2000 Management Committee meeting, 13–14 March 2001; and
 EC Regulation 2037/2000 Extraordinary Management Committee meeting, 11–12 June 2001.

EC Regulation 2037/2000 entered into force on 1 October 2000. In June 2001, the European Commission formally clarified that mandatory recovery and recycling also applied to ODS in fridge insulating foam as of 1 January 2002".²²

¹⁹ Memorandum submitted by DEFRA, Ev 98, para 7.

²⁰ Evidence taken on 26 March 2002, Ev 93, Q259.

²¹ Evidence taken on 26 March 2002, Ev 90, Q239.

²² HC Deb, 6 February 2002, cols 989–90W.

In its memorandum to us²³ the Government sets out in even greater detail the timetable of meetings and correspondence between officials from November 1998 onwards. Mr Meacher also gave the Sub-committee a detailed oral account of the nine occasions on which his officials sought clarification of the regulation.²⁴ A similar chronology of the same meetings and letters, albeit from a different point of view, is set out in the memorandum from the European Commission.²⁵ We note that eight formal requests were made and a special meeting of the Management Committee was summoned out of cycle at British request before the confusion about the treatment of foam was clarified to the satisfaction of the United Kingdom. **We recommend that Regulations such as 2037/2000 should in future not be agreed to until the practical implications of implementation have been clarified.**

25. Concern centred over the interpretation of Article 16 of the Regulation. Paragraphs 1 to 3 of Article 16 of the Regulation read as follows:

Recovery of used controlled substances

(1) Controlled substances contained in:

- refrigeration, air-conditioning and heat pump equipment, except domestic refrigerators and freezers,
- equipment containing solvents,
- fire protection systems and fire extinguishers,

shall be recovered for destruction by technologies approved by the Parties or by any other environmentally acceptable destruction technology, or for recycling or reclamation during the servicing and maintenance of equipment or before the dismantling or disposal of equipment.

(2) Controlled substances contained in domestic refrigerators and freezers shall be recovered and dealt with as provided in paragraph 1 after 31 December 2001.

(3) Controlled substances contained in products, installations and equipment other than those mentioned in paragraphs 1 and 2 shall be recovered, if practicable, and dealt with as provided in paragraph 1.

United Kingdom officials apparently assumed that insulating foam in refrigerators came under Article 16(3). The question to which they sought a definitive answer was whether the recovery of foam from refrigerators was considered 'practicable' by EC officials and by other member states.

26. Witnesses took different views of the way in which United Kingdom officials acted. Dr Tom Batchelor, of the Climate Change Unit at the European Commission, expressed his surprise at the attitude of the UK officials, saying that previously "the negotiation team in DEFRA has always been very concerned with minimising any releases to the atmosphere. The track that was taken in these arguments here [over Article 16], I would have to admit, was not consistent with the effort that has been put in in the past."²⁶ *Mr Peter Jones, of*

²³ Memorandum submitted by DEFRA, Ev 98-102, paras 16-29.

²⁴ Evidence taken on 15 April 2002, Ev 107, Q295.

²⁵ Memorandum submitted by the European Commission, Ev 73-87.

²⁶ Evidence taken on 26 March 2002 Ev 93, Q265.

Biffa Waste Services Limited, told us that in his view the Government had lost sight of its own broad environmental strategy to reduce emissions, and rather than embracing the spirit of the Regulation it had instead focussed too closely on avoiding the burden of implementing its details. He said that “my perception is that we suffered from the wood for the trees syndrome...[UK officials] were in the undergrowth, focussed on the fact that they were trying to work out how they were going to escape from what they saw as an onerous condition that they had agreed to from Europe.”²⁷ In the event, Biffa Waste Services Limited elected not to invest in the specialist equipment necessary for recycling fridges.

27. In his evidence to us it was put to Mr Meacher that having been surprised by the realisation of the extent of the Regulation, the Government had then sought to delay its implementation: he replied that “to say that we were simply playing for time, engaging in semantics, I simply do not accept”.²⁸

28. Instead, Mr Meacher explained, the Government was genuinely seeking clarification of the ‘if practicable’ caveat in Article 16(3). He argued that

“our view of ‘if practicable’ was based on three criteria. Firstly the availability of the relevant technologies in the UK; secondly the economic feasibility of introducing such technologies if they were in use elsewhere; and thirdly the concept of proportionality. In other words we did believe that the question of cost versus benefit was relevant here”.²⁹ He also said that he accepted that “there is significant chlorine loading in the foam and therefore it is justified so long as it is practical. Now it is technically extremely difficult, it is costly also. Those are relevant considerations.”³⁰

29. Some other member states did consider that recovery of foam was practicable. Germany, Sweden, Denmark and Austria all had the necessary recycling equipment in place some years ago, and said as much at the meeting of the Management Committee on 4 October 2000.³¹ However, that left a majority of European Union states which did not have the equipment, making it important that they should know well in advance what provisions needed to be made. Dr Batchelor told the Sub-committee that in the last three years 200,000 refrigerators per annum had been recycled in Austria and Denmark, 300,000 in Sweden and more than 2 million refrigerators per year had been recycled annually in Germany.³² When questioned whether this proved that proper recovery of foam obviously was practicable, Mr Meacher told us that “the question then has to be decided what is meant by ‘if practicable’. It might be a question of if that technology exists in another country fine, then it is practicable anywhere, or it might be, yes, of course it is practicable because it exists elsewhere, but we have to look at the practicalities of investing in our own country and the timescales which apply to that”.³³

30. Concern about the cost of such investments appear to have been the main reasons for the unwillingness of United Kingdom officials to accept that Regulation 2037/2000 would apply to CFC and HCFC bearing foam. Despite the clear views of some other Member States on the question of practicability, and their inability to extract what they considered to be a definitive answer from the Commission, officials did not make contingency plans for the eventuality that the Regulation would apply to the foam of fridges from 1 January 2002. Mr Meacher told the Sub-committee “We could have put in place, I suppose, a domestic

²⁷ Evidence taken on 26 March 2002, Ev 65, Q190.

²⁸ Evidence taken on 15 April 2002, Ev 112, Q326.

²⁹ Evidence taken on 15 April 2002, Ev 109, Q302.

³⁰ Evidence taken on 15 April 2002, Ev 110, Q310.

³¹ Minutes of the EC Regulation 2037/2000 Management Committee meeting, 4–6 October 2000, Ev 76.

³² Evidence taken on 26 March 2002, Ev, 931, Q266.

³³ Evidence taken on 15 April 2002, Ev 113, Q329.

regulation even in the face of the continuing confusion and uncertainty from the EU side and if we were trying to do all that, all I can say is I think there would have been great resistance within Government to forcing industry to do something which they were not required to do at considerable expense as a unilateral burden that trendy Mr Meacher in DEFRA or DETR was imposing on the industry when they did not have to".³⁴ The lack of investment in new machinery reflected a lack of clarity about the Regulation, and about who was to pay for the disposal of refrigerators. This was a business opportunity that was missed.

31. In any event, it eventually became clear that the continuing debate about whether foam recovery was 'practicable' under the terms of Article 16(3) was likely to prove redundant: in fact it increasingly seemed that insulating foam fell under Article 16(2), which makes no reference to the practicality of its recovery. Mr Meacher conceded that even in early 2000 officials had been given legal advice that "recovery might come at 16(2)".³⁵ He said that officials "informed the industry that it was likely that the outcome would be that recovery facilities would be required.....their response to us was to continue to press us strongly for certainty".³⁶ Certainty came in June 2001, when it was belatedly made clear that Article 16(2) applies to the insulating foam. All of the debate about the phrase 'if practicable' was proved to be a waste of time. What is more, there was no mechanism by which the implementation of the Regulation could be delayed.

Export

32. Uncertainty about Article 16 of the Regulation was matched by ignorance of the implications of Article 11. It became abundantly clear during the course of our inquiry that despite the involvement of HM Customs and Excise in the negotiation of the Regulation, the Department of the Environment, Transport and the Regions and the Department of Trade and Industry had been unaware of the volume of redundant refrigerators that were in the past collected by retailers, sold on to the waste management industry, and exported to developing countries such as Nigeria and Ghana. A letter from the Department of the Environment, Transport and the Regions to the Dixons group dated 5 January 2001 stated that "as soon as the implications of the export ban in Article 11 had been realised we called a meeting with the trade ... We took these steps because we realised our consultation process on the Regulation had missed the trade [in second hand fridges], despite including both the refrigeration and white goods trade associations...Unfortunately neither business nor Government seems to have appreciated the implications of this part of the Regulation".³⁷

33. The value of the trade to United Kingdom companies was in the region of £30 million per year. Customs and Excise officials, who were aware of the export trade, began to enforce Article 11 of Regulation 2037/2000 when it came into force in October 2000 by preventing export of the refrigerators. They later allowed exports to continue until 1 January 2002 at the request of the Department of the Environment, Transport and the Regions. Mr Meacher conceded that "I am as astonished as you are that when 40 per cent of fridges were exported that this was not known to Government Departments".³⁸ The loss of income to retailers and waste disposal companies as a result of the ending of the export trade resulted in 'take-back' schemes ceasing to operate, and contributed in conjunction with the absence of appropriate recycling machinery to the development of the current backlog of refrigerators.

³⁴ Evidence taken on 15 April 2002, Ev 116, Q359.

³⁵ Evidence taken on 15 April 2002, Ev 116, Q358.

³⁶ Evidence taken on 15 April 2002, Ev 116, Q358.

³⁷ Supplementary memorandum submitted by Dixons Group plc, Ev 57.

³⁸ Evidence taken on 15 April 2002, Ev 111, Q320.

Retailers and the Waste Disposal Industry

34. Even as discussions with Commission officials about the ‘if practicable’ wording of Article 16(3) continued retailers of white goods and the waste management industry were expressing increasing disquiet about the implications of the Regulation. The Chief Executive of the Dixons Group wrote to Mr Meacher on 24 November 2000, warning that the ban on exports of refrigerators could lead to the end of ‘take-back’ schemes.³⁹ We do not know whether Mr. Meacher actually read and answered this letter or whether it was dealt with by officials without the important points it raised being brought directly to his attention. Dixons wrote to officials on 5 December 2000, expressing concern that “as we predicted, our current [waste management] contractors are beginning to close down and go out of business. We envisage by the end of this week that eight of our distribution facilities will be without an onward scrap-processing contractor as the impact of the Regulation continues to bite. As a consequence of the distinct lack of practicable processing routes available to us, the most likely scenario now is that Dixons Stores Group will alter its service proposition with regard to accepting such appliances from customers. Ultimately, the costs associated with correctly processing these appliances will rest with local government – either as local authorities are required to step up their bulky collection services, or as more appliances are recovered having been ‘fly-tipped’ in hedges and fields”.⁴⁰

35. The waste disposal industry also made representations to Government Departments in an attempt to obtain advice on the Regulation. Mr Jones, of Biffa Waste Services Limited, wrote to the Department of Trade and Industry on 5 September 2000, asking whether the Regulation would apply to domestic as well as industrial and commercial refrigeration equipment, because the company wanted to establish whether there would be a market for the technology necessary for disposal.⁴¹ No formal reply was received. Mr Jones then wrote to the Environment Agency in March 2001, saying that “Biffa and Michael Baker Group of companies are examining the feasibility of investing around £2 million in a reprocessing plant for fridges but we are reluctant to commit such investment until we have a clearer understanding from the Department of Trade and Industry and the Department of the Environment, Transport and the Regions as to how the regulations will be enforced”. In the same letter he pointed out that “the consequence [of the Regulation] is that retailers will probably not take an old for new fridge from householders and that 40,000 tonnes of fridges will thus inundate amenity sites from January next year”. The Environment Agency forwarded copies of the letter to the two Government Departments mentioned in it. Mr Jones followed this up with another letter to the Environment Agency on 24 May 2001, in which he said that the Department of the Environment, Transport and the Regions “basically suggested that an effective framework for enforcement would be developed once industry had invested in the necessary equipment to process fridges which offend the Ozone Depleting Substances Regulations.”⁴² The Environment Agency replied on 12 June 2001, that it “does not yet know how the Government intends to implement the requirements of the Ozone Depleting Substances Regulations.”⁴³

36. Giving evidence to the Sub-committee, Mr Meacher said that “what the recycling and foam blowing industry were saying to us was ‘we want certainty one way or the other’ ... That was why the whole thrust of our policy was to ensure their certainty.”⁴⁴ Mr Meacher compared the United Kingdom with member states which already had reprocessing

³⁹ Memorandum submitted by Dixons Group plc, Ev 17.

⁴⁰ Supplementary memorandum submitted by Dixons Group plc, Ev 56.

⁴¹ Memorandum submitted by Biffa Waste Services Ltd, Ev 50.

⁴² Memorandum submitted by Biffa Waste Services Ltd, Ev 51.

⁴³ Supplementary memorandum submitted by Biffa Waste Services Ltd, Ev 71.

⁴⁴ Evidence taken on 15 April 2002, Ev 108–109, Q299.

machinery for fridges in place, saying that most of them had a government-backed waste industry, while the United Kingdom industry was entirely private.⁴⁵ He said that “one of the lessons I might see coming out of this whole episode is that instead of being over concerned about gold plating, I think the industry ought to understand that there are often opportunities in being able to anticipate future demand and future markets and investing in accordance with it, although they will say certainly that they want to have a measure of certainty before they are going to spend two or three million pounds on investment plants.”⁴⁶ We do not find it unreasonable that the waste disposal industry felt in need of an element of certainty before investing several million pounds in specialist equipment. In fact draft guidance on the specification for treatment and reprocessing plants was not issued by the Environment Agency until 19 March 2002.⁴⁷

Local authorities

37. Not until 11 October 2001⁴⁸ were local authorities alerted by DEFRA to the requirements of Regulation 2037/2000; four months after the definitive interpretation had been received. Local authority amenity sites began to see an increased number of discarded refrigerators when retailers ceased their “take-back” schemes in November and December 2001. It soon became clear that with an estimated 2.5 to 3 million fridges discarded annually in the UK, additional capacity was needed to store them pending safe disposal. This has placed considerable financial burden on local authorities, and DEFRA issued guidance on the storage of waste refrigeration equipment on 3 December 2001, announcing the provision to local authorities of £6 million to assist with storage costs until the end of March 2002.⁴⁹ In her evidence to us on 4 March 2002, Councillor Kay Twitchen of the Local Government Association said that no local authority had yet received any of the £6 million, an amount which she in any case considered inadequate.⁵⁰ In fact the first instalments were paid on 3 April and 15 April 2002.⁵¹

38. The Local Government Association told us that its major concern “is with regard to the delays which have taken place in adequately responding to the [Regulation], which have led to the present unfortunate situation where local authorities are having to bear the brunt of a problem outside their own making.”⁵² It also said that “producer responsibility is out of step with the [Regulation] so that the higher environmental standards are being applied without any equal European Union legislation dictating where the costs should fall. The result is that in the United Kingdom the financial and organisational buck has stopped with the only bodies who have any legal obligation to dispose of fridges: local authorities”.⁵³

The cost of the Regulation

39. Despite initial concerns about the possible cost of ‘gold plating’ the Regulation, the costs of mishandling of its negotiation, interpretation and implementation will prove to be significant. We have already referred to the additional £6 million given to help local authorities with the extra costs of storing fridges to the end of financial year 2001-02.⁵⁴ Mr

⁴⁵ Evidence taken on 15 April 2002, Ev 109, Q302.

⁴⁶ *Ibid.*

⁴⁷ Environment Agency Press Notice, 45/02, 19 March 2002, *Draft fridge recycling standards published*, www.environment-agency.gov.uk/news/273488.

⁴⁸ Memorandum submitted by the LGA, Ev 1.

⁴⁹ HC Deb, 11 December 2001, Col 807.

⁵⁰ Evidence taken on 4 March 2002, Ev 8–9, QQ52,53.

⁵¹ Supplementary memoranda submitted by DEFRA, Ev 123.

⁵² Memorandum submitted by the LGA, Ev 1.

⁵³ Supplementary memorandum submitted by the LGA, Ev 12.

⁵⁴ DEFRA Press Release 276/01, *Action on old fridges*, 4 December 2001.

Meacher told us that the total cost would be “much higher”.⁵⁵ He estimated the cost to the UK in 2002-2003 might be £40 million,⁵⁶ and agreed that “the total cost of £40 million or whatever it turns out to be is a direct result of us not being able – I say “us” but I include the industry, all the stakeholders – to put provision in quickly enough to deal with this and have it ready before 1 January 2002”.⁵⁷

40. Mr Meacher was optimistic that the stockpile of fridges could be cleared by the end of 2003.⁵⁸ Several thousand fridges are currently being exported to Germany for disposal, and recycling plants were operational in Lewes in Sussex and Rushden in Northamptonshire. Several more applications for licences for recycling facilities have been made to the Environment Agency. The Minister was unable to say what financial and practical provisions would be made in the medium term, when the stockpile had been cleared, to deal with the disposal of refrigerators.⁵⁹ In the longer term, he pointed out, the introduction of legislation such as the Waste Electrical and Electronic Equipment (WEEE) Directive would mean that disposal of fridges and other goods would be financed by the consumer via higher prices.⁶⁰ **The Minister should inform us as soon as he is able to where financial responsibility for the disposal of refrigerators will lie once the current backlog of refrigerators has been cleared.**

The Role of Officials and Ministers

41. Mr Meacher asserted that “I do not believe that British civil servants behaved in a deficient or improper way at all, not at all. I have looked at this with great care and do not believe that any person on the British side has failed to do what was necessary in the circumstances”.⁶¹ *Nevertheless, we find it extraordinary that the Minister was unaware that there was a potential problem until July 2001, and that his officials had sought clarification of the Regulation on nine occasions without referring the matter to him.* Given that they had received legal advice early in 2000 which indicated that Article 16(2) of the Regulation could be interpreted as requiring recycling of CFC bearing foam, it is unfortunate that for whatever reason officials chose not to take the advice given in respect of Article 16 of the Regulation.

42. Dixons told us that “I think for a long time we were dealing with Government at the wrong level. We repeatedly dealt with officials who seemed not to take our concerns seriously and seemed not to accept our assessment of the problem”.⁶² This comment was echoed by the Local Government Association, who told us that “at this stage [summer 2001], local authority representatives flagged up to DEFRA the likely scale of problems and the possibility of ‘fridge mountains’ building up, due to the Regulation’s impact. There is a perception among those involved since Summer 2001 in discussions with the Government that these warnings were insufficiently heeded”.⁶³

43. Mr Meacher told the House in January 2002 that the Government had been “badly let down” by the Commission. In light of the clear evidence we have received that phrase was ill-judged. Mr Meacher himself told us on 26 March 2002 that “I would not say it again in cold blood, no”.⁶⁴

⁵⁵ Evidence taken on 15 April 2002, Ev 114, Q342.

⁵⁶ Evidence taken on 15 April 2002, Ev 117, Q361.

⁵⁷ Evidence taken on 15 April 2002, Ev 117, Q367.

⁵⁸ Evidence taken on 15 April 2002, Ev 119, Q375.

⁵⁹ *Ibid.*

⁶⁰ Evidence taken on 15 April 2002, Ev 119, Q376.

⁶¹ Evidence taken on 15 April 2002, Ev 119, Q332.

⁶² Evidence taken on 4 March 2002, Ev, 42 Q165.

⁶³ Memorandum submitted by the LGA, Ev 1.

⁶⁴ Evidence taken on 15 April 2002, Ev 113, Q331.

44. Whilst the European Commission must accept some blame for lack of clarity, the overwhelming responsibility for mishandling the implementation of Regulation 2037/2000 lies with the Government. Government officials initially made a judgement that insulating foam within fridges fell under Article 16(3) not Article 16(2); they then argued about the semantics of the phrase ‘if practicable’ when in fact the practicality of dealing with the foam was abundantly demonstrated by practice in other European countries; they were unaware of the implications of Article 11 for exports of fridges from the UK, and therefore for ‘take-back’ schemes; despite requesting clarification on so many occasions they failed to resolve the issue; they apparently ignored or reacted very slowly to a host of warnings from interested parties; and despite those warnings and legal advice suggesting that the Regulation would be taken to apply to foam insulation they failed to put in place contingency plans to cope with the problem. This debacle will cost the UK around £40 million, a cost which would not otherwise have been incurred.

Lessons learned

45. When asked whether the UK Government had signed up to Regulation 2037/2000 when unaware of the implications of doing so, Mr Meacher replied that “in the event it was indeed uncertain as to the application. The matter was never raised with us in our consultation with the industry. They were far more concerned about methyl bromide and HCFCs. It was never discussed in the Environment Council. When it came to be discussed by officials in the Management Committee either the matter was repeatedly postponed or there were different interpretations and the matter was never resolved. Obviously that is very unsatisfactory. I cannot think of another precedent where that has happened. Obviously that should not happen and we have to take steps to ensure that does not happen again”.⁶⁵ **The fact is that doubts were expressed and queries raised for some months before the Regulation was adopted. All that had to be done was for officials to alert Ministers to the problem, and ensure that the Regulation was not agreed until there was a clear shared understanding of what it meant. We find it deeply disturbing that the Government signed up to the Regulation whilst still suffering from ‘knowledge gaps’ about its full impact.**

46. DEFRA’s written memorandum suggests that the following lessons should be learned:

- A perennial difficulty in negotiating technical EU proposals is ensuring sufficient technical examination of the implications of proposed measures so that it is clear at the time of agreement what the intended and actual effects are.
- There is a strong argument, where significant interpretations of such a Regulation are being considered, for returning such issues to the Council of Ministers to clarify their intention.
- While it is essential to ensure that environmental regulation is necessary and proportionate, there is a good case for adopting a more positive approach to the opportunities it offers to UK business.
- Government needs to create a policy framework that stimulates innovative and market-led solutions
- The UK should continue to press the Commission for regulatory impact assessments or

⁶⁵ Evidence taken on 15 April 2002, Ev 110–111, Q313.

cost-benefit assessments of all new proposals.⁶⁶

47. The Local Government Association told us that it “considers it imperative that Government learns the lessons of the developing fridge ‘crisis’ and plans adequately for, and sufficiently well in advance of, the introduction of future European regulations, such as the Waste Electrical and Electronic Equipment Directive. A similar situation must not be allowed to occur again – adequate time has to be allowed for local authorities and the waste industry to implement the requirements of new regulations in a planned, professional fashion”.⁶⁷ **We recommend that in future the Government fully assesses the impact of European Union Regulations and Directives before it agrees to them, following the practices it has itself described to us; and that in particular it looks again at the plethora of forthcoming waste disposal Regulations and Directives as a matter of urgency. We further recommend that the Government ensures that in future all relevant stakeholders are consulted as part of the examination of the implications of EU legislation.**

48. The fridges saga has illustrated problems in the arrangements between the European Union and member states for the management of the implementation of policies to ensure common interpretation of requirements. The Water Framework Directive with its 10 working groups ensures both political agreement and practical implementation and shows a way forward with a mechanism for common interpretation

⁶⁶ Memorandum submitted by DEFRA, Ev 104–105, para 49.

⁶⁷ Memorandum submitted by the LGA, Ev 3.

SELECTION OF FORTHCOMING EU LEGISLATION			
Issue	Type of measure	Purpose	State of play
Benzene & CO Limit Values & Air Quality	Directive	Forms part of a package of measures designed to combat problems of air pollution. Gives requirements for assessment of concentrations and provides for the dissemination of information about pollutants.	Published in OJ 13/12/00, (L313), ref. 2000/69/EC. MSs must comply with the provisions of this directive not later than 31 December 2002.
Volatile Organic Compound Emissions	Directive	To prevent or reduce direct & indirect effects of emissions of VOCs into the environment, mainly into air, by various measures & procedures.	Published in OJ 29/03/99, (L85), ref.: 99/13/EC. MSs must implement the Directive by April 2001. Installations must also be registered or authorised by 31/10/07 to enable MSs to report on implementation.
Implementation of European Pollutant Emission Register	Decision	States that MSs must report to the Commission on emissions from all individual facilities with one or more of the activities listed in Annex 1 to the IPPC Directive.	Published in OJ on 28/07/00, (L192), ref:2000/479/EC. The first report must be presented by MSs in June 2003 & should be submitted by means of electronic data transfer.
Substances that Deplete the Ozone Layer	Regulation	To bring EU law on ozone-depleting substances in line with Montreal Protocol.	Published in OJ 29/09/01, (L244), ref.: 2000/2037. To enter into force on the day following that of its publication in the OJ & shall apply from 01/10/00.
National Emissions Ceilings Directive	Directive	Proposes ceilings for emissions of SO ₂ , NO _x , VOCs and NH ₃ to be reached by 2010	Published in OJ L309 (ref. 2001/81/EC). Enters into force on date of publication. Member States must transpose this Directive into national law before 27 November 2002.
Large Combustion Plants	Revision of Directive	To tighten emission limits on existing parameters and prescribe new limits for NO _x , SO ₂ and dust from new combustion plants.	Published in OJ L309 (ref. 2001/80/EC). Enters into force on the day of its publication and repeals Directive 88/609/EEC with effect from 27 November 2002. MSs must transpose this Directive before that date.
Strategic environmental assessment (SEA) of certain plans & programmes	Directive	To provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.	Published in OJ on 21 July 2001, (L197), ref.: 2001/42/EC. MSs must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 21 July 2004.
Minimum Criteria for Environmental Inspections	Recommendation	Provides for minimum criteria for environmental inspections in the Member States.	Published in OJ L118 (ref. 2001/331/EC). MSs should report to the Commission on their experience of the operation of this Recommendation two years after the date of its publication in the OJ.
Heavy Metals in Packaging	Decision	To exempt glass from the limits on heavy metal content for packaging	Published in OJ 02/03/01, (L62), ref. 2001/171/EC. Entered into force on 30/06/01.

Issue	Type of measure	Purpose	State of play
End-of-Life Vehicles	Directive	Lays down measures to prevent waste from vehicles & provides for the re-use, recycling & other forms of recovery of end-of-life vehicles of their components so as to reduce the disposal of waste, as well as the improvement in the environmental performance of all the economic operators involved in the life cycle of vehicles.	Published in OJ 21/10/00, (L269), ref. 2000/53/EC. Article 5(4), on the free delivery of complete vehicles to an authorised treatment facility, will apply with effect from 01/07/02 for vehicles put on the market as from that date; and as from 01/01/07 for vehicles put on the market before 01/07/01. MSs must implement this directive by 21/04/02.
Port Reception Facilities for Ship-Generated Waste & Cargo Residues	Directive	To reduce the discharges of ship-generated waste & cargo residues into the sea by improving the availability of port-reception facilities.	Published in OJ 28/12/00, (L332), ref.: 2000/59/EC. MSs must adopt provisions to comply with this directive before 28/12/02.
Waste Incineration	Directive	To prevent or limit as far as practicable negative effects on the environment, & resulting risk to human health, from the incineration & co-incineration of waste.	Published in OJ 28/12/00, (L332), ref:2000/76/EC. Applies to all existing plants from 28/12/05 & to new plants from 28/12/02 (date by which all MSs must comply with the Directive).
Landfill	Directive	Provides for measures, procedures and guidance to prevent or reduce as a far as possible negative effects on the environment, as well as any resulting risk to human health, from the landfilling of waste during the whole life-cycle of the landfill.	Published in OJ L182 (ref. 99/31/EC). MSs are required to comply with the Directive within two years of its entry into force on 17 July 1999.
Water Framework Directive	Directive	Establishes a framework for Community action in the field of water policy.	Published in OJ L327 (ref. 2000/60/EC) and entered into force on day of publication. MSs must bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 22 December 2003.
Priority Substances in the field of water policy	Decision	Establishes a list of 33 substances ranked according to their relative risk to the aquatic ecosystem as required under the WFD. Substances are classified into 3 categories: Priority hazardous substances, Priority substances to be reviewed, & Priority substances.	Published in OJ L331 (ref. 2455/2001/EC) & entered into force on the day following its publication. List is added to Directive 2000/60/EC (WFD) as Annex X.
Waste Electrical and Electronic Equipment	Directive	Promotes recovery of electrical and electronic waste and to improve the environmental performance of the economic operators involved in the treatment of such waste. Also restricts the use of hazardous substances in electrical and electronic equipment.	Adopted 13/06/2000
Public access to environmental information	Directive	Replaces Council Directive 90/313/EEC, of 7 June 1990, on the freedom of access to information on the environment	Adopted 29/06/2000

Issue	Type of measure	Purpose	State of play
Assessment and management of environmental noise	Directive	Provides a basis for an integrated EU policy on environmental noise. Introduces measures to classify and understand the problems caused by noise, including the idea of making EU-wide 'noise maps' based on common methods and indicators.	Adopted 26/07/2000
Integrated coastal zone management	Recommendation	Encourages Member States to undertake a national inventory of legislation, institutions and actors involved in the planning and management of the coastal zone, and to develop a national strategy to promote integrated coastal zone management	Adopted 08/09/2000
Public participation in drawing up environmental plans & programmes	Directive	Moves towards the ratification of the Aarhus Convention (the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters)	17/01/2001
Emission of gaseous and particulate pollutants from internal combustion engines in non-road mobile machinery	Directive	Extends the scope of the current Directive on emissions from compression ignition engines to be used in non-road mobile machinery to cover small spark ignition engines as well	Adopted 18/12/2000
GMOs	Regulation	lays down provisions for the labelling of genetically modified organisms and traceability of food and feed products produced from GMOs	Adopted 25/07/2001
Petrol and diesel fuels	Directive	Requires zero sulphur (fewer than 10 ppm) petrol and diesel to be introduced and available in the Member States by no later than 1 January 2001. By 1 January 2011, all petrol and diesel sold will have to have fewer than 10 ppm. The Commission will review these specifications by 31 December 2006. Each Member State will be required to introduce a fuel quality monitoring system.	Adopted 11/05/2001
Emissions trading	Directive	Establishes a scheme for greenhouse gas emission allowance trading within the Community	Adopted 23/10/2001
Environmental liability	Directive	Establishes a Community regime for environmental liability with regard to the prevention and remedying of environmental damage	23/01/2002
GMOs	Regulation	Establishes a common system of notification and information for exports to third countries of genetically modified organisms (GMOs)	18/02/2002

Conclusions and recommendations

- (a) **The European Scrutiny Committee may of course itself wish to review any lessons for the scrutiny system arising from this episode, and in particular the adequacy of the two Explanatory Memoranda (EM) provided (paragraph 15).**
- (b) **We are particularly concerned at the breakneck speed at which the draft was propelled through by Parliament in the autumn of 1998 (paragraph 16).**
- (c) **We hope that the European Parliament too may wish to review how well its scrutiny mechanisms worked in relation to this document (paragraph 16).**
- (d) **We recommend that Regulations such as 2037/2000 should in future not be agreed to until the practical implications of implementation have been clarified (paragraph 24).**
- (e) **The Minister should inform us as soon as he is able to where financial responsibility for the disposal of refrigerators will lie once the current backlog of refrigerators has been cleared (paragraph 40).**
- (f) **Whilst the European Commission must accept some blame for lack of clarity, the overwhelming responsibility for mishandling the implementation of Regulation 2037/2000 lies with the Government. Government officials initially made a judgement that insulating foam within fridges fell under Article 16(3) not Article 16(2); they then argued about the semantics of the phrase ‘if practicable’ when in fact the practicality of dealing with the foam was abundantly demonstrated by practice in other European countries; they were unaware of the implications of Article 11 for exports of fridges from the UK, and therefore for ‘take-back’ schemes; despite requesting clarification on so many occasions they failed to resolve the issue; they apparently ignored or reacted very slowly to a host of warnings from interested parties; and despite those warnings and legal advice suggesting that the Regulation would be taken to apply to foam insulation they failed to put in place contingency plans to cope with the problem (paragraph 44).**
- (g) **This debacle will cost the UK around £40 million, a cost which would not otherwise have been incurred (paragraph 44).**
- (h) **The fact is that doubts were expressed and queries raised for some months before the Regulation was adopted. All that had to be done was for officials to alert Ministers to the problem, and ensure that the Regulation was not agreed until there was a clear shared understanding of what it meant. We find it deeply disturbing that the Government signed up to the Regulation whilst still suffering from ‘knowledge gaps’ about its full impact (paragraph 45).**
- (i) **We recommend that in future the Government fully assesses the impact of European Union Regulations and Directives before it agrees to them, following the practices it has itself described to us; and that in**

particular it looks again at the plethora of forthcoming waste disposal Regulations and Directives as a matter of urgency. We further recommend that the Government ensures that in future all relevant stakeholders are consulted as part of the examination of the implications of EU legislation (paragraph 47).

PROCEEDINGS OF THE DISPOSAL OF REFRIGERATORS SUB- COMMITTEE RELATING TO THE REPORT

MONDAY 13 MAY 2002

Members present:

Mr Michael Jack, in the Chair

Mr David Borrow
Mr David Curry
Mr Eric Martlew

Mr Austin Mitchell
Mr David Lepper
Mr Paddy Tipping

The Sub-committee deliberated.

[Adjourned till Monday 20 May at half past Three o'clock.

MONDAY 20 MAY 2002

Members present:

Mr Michael Jack, in the Chair

Mr David Borrow
Mr David Lepper
Diana Organ

Mr Austin Mitchell
Mr Eric Martlew
Mr Paddy Tipping

The Sub-committee deliberated.

Draft Report [Disposal of Refrigerators], proposed by the Chairman, brought up and read.

Ordered, That the Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 25 read and agreed to.

Paragraph 26 read, as follows:

“Witnesses took different views of the way in which United Kingdom officials acted. Dr Tom Batchelor, of the Climate Change Unit at the European Commission, expressed his surprise at the attitude of the UK officials, saying that previously “the negotiation team in DEFRA has always been very concerned with minimising any releases to the atmosphere. The track that was taken in these arguments here [over Article 16], I would have to admit, was not consistent with the effort that has been put in in the past.” *Mr Peter Jones, of Biffa Waste Services Limited, told us that in his view the Government had lost sight of its own broad environmental strategy to reduce emissions, and rather than embracing the spirit of the Regulation it had instead focussed too closely on avoiding the burden of implementing its details.* He said that “my perception is

that we suffered from the wood for the trees syndrome...[UK officials] were in the undergrowth, focussed on the fact that they were trying to work out how they were going to escape from what they saw as an onerous condition that they had agreed to from Europe.” In the event, Biffa Waste Services Limited elected not to invest in the specialist equipment necessary for recycling fridges.”

Amendment proposed in line 6, after the word "past" to insert the words "However, Dr Batchelor's is a retrospective view which he did not make clear at the time to the Government, to Departments, or to the UK representatives. DEFRA and the Government having long taken this lead in minimising such releases were not attempting to maintain them but to clarify whether the Commission considered that they should also be removed from foam."-(*Mr Mitchell.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2	Noes, 4
Mr Austin Mitchell Diana Organ	Mr David Borrow Mr David Lepper Mr Eric Martlew Mr Paddy Tipping

Paragraph 26 agreed to.

Paragraphs 27 to 30 read and agreed to.

Paragraph 31 read, as follows:

“In any event, it eventually became clear that the continuing debate about whether foam recovery was ‘practicable’ under the terms of Article 16(3) was likely to prove redundant: in fact it increasingly seemed that insulating foam fell under Article 16(2), which makes no reference to the practicality of its recovery. Mr Meacher conceded that even in early 2000 officials had been given legal advice that “recovery might come at 16(2)”. He said that officials “informed the industry that it was likely that the outcome would be that recovery facilities would be required.....their response to us was to continue to press us strongly for certainty”. Certainty came in June 2001, when it was made clear that Article 16(2) applies to the insulating foam. All of the debate about the phrase ‘if practicable’ was proved to be a waste of time. What is more, there was no mechanism by which the implementation of the Regulation could be delayed.”

Amendment proposed, in line 8, before the word "made" to insert the word "belatedly".-(*Mr Mitchell.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 2
Mr David Borrow Mr David Lepper Mr Austin Mitchell Diana Organ	Mr Eric Martlew Mr Paddy Tipping

Another Amendment proposed, in line 7, after the word “certainty” to insert the words “The kind of certainty on which major investment decisions can be firmly based could come only from the Commission. The crucial problem has been that this was so long delayed and finally came only.”-(*Mr Mitchell.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Mr Austin Mitchell

Noes, 5

Mr David Borrow
Mr David Lepper
Mr Eric Martlew
Diana Organ
Mr Paddy Tipping

Another Amendment proposed, in line 8, leave out the word “All” to the word “time” in line 9.—(*Mr Mitchell.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr David Lepper
Mr Austin Mitchell
Diana Organ

Noes, 3

Mr David Borrow
Mr Eric Martlew
Mr Paddy Tipping

Whereupon the Chairman declared himself with the Noes.

Paragraph 31 agreed to.

Paragraphs 32 to 48 read and agreed to.

Resolved, That the Report be the Report of the Sub-committee to the Committee.

Ordered, That the Chairman do make the Report to the Committee.

[The Sub-committee adjourned

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

WEDNESDAY 12 JUNE 2002

Members present:

Mr David Curry, in the Chair

Mr Colin Breed	Mr Austin Mitchell
David Burnside	Diana Organ
Mr David Drew	David Taylor
Mr Michael Jack	Mr Mark Todd
Mr Eric Martlew	

* * *

The Committee deliberated.

Report from the Disposal of Refrigerators Sub-committee [*Disposal of Refrigerators*], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 30 read and agreed to.

Paragraph 31 read, as follows:

“In any event, it eventually became clear that the continuing debate about whether foam recovery was ‘practicable’ under the terms of Article 16(3) was likely to prove redundant: in fact it increasingly seemed that insulating foam fell under Article 16(2), which makes no reference to the practicality of its recovery. Mr Meacher conceded that even in early 2000 officials had been given legal advice that “recovery might come at 16(2)”.⁶⁸ He said that officials “informed the industry that it was likely that the outcome would be that recovery facilities would be required.....their response to us was to continue to press us strongly for certainty”.⁶⁹ Certainty came in June 2001, when it was belatedly made clear that Article 16(2) applies to the insulating foam. All of the debate about the phrase ‘if practicable’ was proved to be a waste of time. What is more, there was no mechanism by which the implementation of the Regulation could be delayed.”

Amendment proposed, in line 9, to leave out from the word “All” to the word “more” in line 10.—(*Mr Mitchell*.)

⁶⁸ Evidence taken on 15 April 2002, Ev 104, Q358.

⁶⁹ Evidence taken on 15 April 2002, Ev 104, Q358.

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr Austin Mitchell
Mr David Taylor

Noes, 6

Mr Colin Breed
David Burnside
Mr Michael Jack
Mr Eric Martlew
Diana Organ
Mr Mark Todd

Paragraph 31 agreed to.

Paragraphs 32 to 43 read and agreed to.

Paragraph 44 read, as follows:

“Whilst the European Commission must accept some blame for lack of clarity, the overwhelming responsibility for mishandling the implementation of Regulation 2037/2000 lies with the Government. Government officials initially made a judgement that insulating foam within fridges fell under Article 16(3) not Article 16(2); they then argued about the semantics of the phrase ‘if practicable’ when in fact the practicality of dealing with the foam was abundantly demonstrated by practice in other European countries; they were unaware of the implications of Article 11 for exports of fridges from the UK, and therefore for ‘take-back’ schemes; despite requesting clarification on so many occasions they failed to resolve the issue; they apparently ignored or reacted very slowly to a host of warnings from interested parties; and despite those warnings and legal advice suggesting that the Regulation would be taken to apply to foam insulation they failed to put in place contingency plans to cope with the problem. This debacle will cost the UK around £40 million, a cost which would not otherwise have been incurred.”

Amendment proposed, in line 1 to leave out from the word “Whilst” to the word “incurred” in line 13, and insert the words:

“Blame must be apportioned all round. The Commission was to blame for the lack of clarity in the regulation and for the long failure to clarify it to the satisfaction of the British government until June 2001. The system for European regulation is at fault because once this regulation was in motion it could be neither suspended nor delayed and came into full effect on 1 January 2002 despite the fact that belated clarification made it impossible to dispose of all fridges in Britain until late in 2002 and the fact that several other governments were not even able, for whatever reason, to implement it at all. British officials were unaware of the implications of Article 11 for exports of fridges from the UK. They either ignored or reacted too slowly to warnings from interested parties, failed to put contingency plans in place and did not bring the developing problems to the attention of the Minister until well into 2001, by which stage it was too late to put the appropriate investment and machinery in place to dispose of both coolant and foam when the regulation came into force. This debacle will cost the UK around £40 million, a cost which would not otherwise have been incurred. The whole episode provides a depressing example of how not to regulate on a European basis.”—(*Mr Mitchell*.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr David Drew
Mr Austin Mitchell
Mr David Taylor

Noes, 6

Mr Colin Breed
David Burnside
Mr Michael Jack
Mr Eric Martlew
Diana Organ
Mr Mark Todd

Paragraph 44 agreed to.

Paragraphs 45 to 48 read and agreed to.

Summary read and agreed to.

Motion made, and Question put, That the Report be the Fourth Report of the Committee to the House.

The Committee divided.

Ayes, 8

Mr Colin Breed
David Burnside
Mr David Drew
Mr Michael Jack
Mr Eric Martlew
Diana Organ
David Taylor
Mr Mark Todd

Noes, 1

Mr Austin Mitchell

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select committee (reports)) be applied to the Report.

Ordered, That the Appendices to the Minutes of Evidence taken before the Disposal of Refrigerators Sub-committee be reported to the House.

* * *

[Adjourned till Wednesday 19 June at Ten o'clock.]

LIST OF WITNESSES

Page

Evidence taken Monday 4 March 2002
[HC 673-i]

LOCAL GOVERNMENT ASSOCIATION (LGA)

Councillor Kay Twitchen and Mr Ian Fielding Ev 3

DIXONS GROUP PLC

Ms Lesley Smith, Mr Geoff Bellingham and Ms Vivien Williams Ev 33

Evidence taken Tuesday 26 March 2002
[HC 673-ii]

BIFFA WASTE SERVICES LTD

Mr Peter Jones Ev 63

EUROPEAN COMMISSION

Mrs Marianne Wenning and Dr Tom Batchelor Ev 88

Evidence taken Monday 15 April 2002
[HC 673-iii]

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Rt Hon Michael Meacher, MP, Ms Maria Nolan and Ms Sue Ellis Ev 97

LIST OF MEMORANDA INCLUDED IN THE MINUTES OF EVIDENCE

	<i>Page</i>
1. Memorandum by Local Government Association (LGA)	Ev 1
2. Supplementary memorandum by Local Government Association (LGA) ...	Ev 12
3. Memorandum by Dixons Group plc	Ev 13
4. Supplementary memorandum by Dixons Group plc	Ev 43
5. Memorandum by Biffa Waste Services Ltd	Ev 46
6. Supplementary memorandum by Biffa Waste Services Ltd	Ev 71
7. Memorandum by the European Commission	Ev 73
8. Supplementary memorandum by the European Commission	Ev 95
9. Memorandum by the Department for Environment, Food and Rural Affairs	Ev 97
10. Supplementary memorandum by the Department for Environment, Food and Rural Affairs	Ev 122

LIST OF APPENDICES TO THE MINUTES OF EVIDENCE

1. Letter from Rt Hon Michael Meacher, MP, Minister for the Environment, Department of the Environment, Transport and the Regions to Mr Chris Davies, MEP	Ev 125
2. Memorandum by the British Soft Drinks Association	Ev 125
3. Memorandum by the Environment Agency	Ev 126
4. Memorandum by the British Retail Consortium	Ev 129
5. Memorandum by M Baker Recycling Limited	Ev 131

UNPRINTED MEMORANDA

The following Memoranda were received and have been reported to the House. Copies have been placed in the House of Commons Library where they may be inspected by Members. Other copies have been placed in the Record Office, House of Lords, and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1A 0PW (tel 020 7219 3074). Hours of inspection are from 9.30 am to 5.30pm on Mondays to Fridays.

1. Memorandum by the Institute for European Environmental Policy
2. Memorandum by the Institute of Waste Management
3. Memorandum by the Country Land and Business Association
4. Memorandum by the MeWa Recycling Maschinen und Anlagenbau GmbH



Figure 1.

(Source: MeWA Recycling, Maschinen und Anlagenbau GmbH, Gechingen, Germany)

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