

EXPLANATORY MEMORANDUM TO

THE WASTE (CIRCULAR ECONOMY) (AMENDMENT) REGULATIONS 2020

YEAR No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument transposes (transfers requirements into UK law) six amending EU Directives in the field of waste. It amends the legislation that transposed Directive 2008/98/EC on waste (“the Waste Framework Directive”), Directive 1999/31/EC on the landfill of waste (“the Landfill Directive”), Directive 94/62/EC on packaging and packaging waste (“the Packaging Directive”), three other waste related Directives in England and Wales, and some legislation that partially transposed the same Directives in Scotland and Northern Ireland. It is making all the legislative changes required to transpose the 2020 Circular Economy Package (CEP) measures on behalf of England and Wales, apart from some amendments relating to hazardous waste which Defra is making for England only. The Welsh Government will be making a Wales-only SI to include amendments relating to hazardous waste, as well as updating references in several Wales-only SIs. Through amendments made to legislation that apply in Scotland and Northern Ireland, this instrument is partially transposing the 2020 CEP measures on behalf of Scotland and Northern Ireland (see section 6 below for further information). Further amendments to complete the transposition of the CEP will be made by Scotland and Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom
- 4.3 This instrument amends legislation with extent as follows:
- i. UK extent: regulations 5, 6, 7, 8, 12, 13 (except regulation 13(3), which amends legislation that does not extend to Scotland), 17, 18, 19, and 22;
 - ii. England and Wales extent: regulations 2, 4, 9 (though amendments apply to England only), 14 (though amendments apply to England only), 15, 16, 20, 21;

- iii. GB extent: regulations 3, 10, 23;
 - iv. England, Wales and Northern Ireland: regulation 11 (revoked by SSI 2017/115 in relation to Scotland).
- 4.4 Amendments made to legislation by this instrument have the same extent and application as that legislation apart from Regulation 4 which extends to England and Wales only and regulation 5(3)(a) and which extends to England and Wales and Northern Ireland only, and 5(3) (b) Scotland only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Waste (Circular Economy) (Amendment) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument transposes (transfers requirements into UK law) six amending EU Directives in the field of waste (Directive (EU) 2018/849, Directive (EU) 2018/850, Directive (EU) 2018/851, Directive (EU) 2018/852, Commission Delegated Directive (EU) 2020/362 and Commission Delegated Directive (EU) 2020/363).
- 6.2 Directive (EU) 2018/851, Directive (EU) 2018/850 and Directive (EU) 2018/852 amend the Waste Framework Directive, the Landfill Directive and the Packaging Directive, respectively.
- 6.3 The following Directives were all amended by Directive (EU) 2018/849: Directive 2000/53/EC on end-of life vehicles (“the ELV Directive”), Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators (“the Batteries Directive”) and Directive 2012/19/EC on waste electrical and electronic equipment (WEEE) (“the WEEE Directive”).
- 6.4 The six original Directives were transposed (for England and Wales, and partially for Scotland and Northern Ireland) by the following legislation:
- Environmental Protection Act 1990: Part 2 of this Act (waste on land) is the principal primary legislation in relation to waste and contains various duties, civil penalties and criminal offences in relation to waste.
 - The Waste and Emissions Trading Act 2003: This Act partially transposes the Landfill Directive, specifically Articles 5(1) and (2) of that Directive. The aim of those Articles is to reduce the amount of biodegradable municipal waste that is sent to landfill.
 - The End-of-Life Vehicles Regulations 2003 – S.I. 2003/2635: These regulations partially implement the ELV Directive. These regulations outline the design requirements for materials and components of vehicles put on the market after the Regulations come into effect. They also introduce minimum treatment standards and the Certificate of Destruction, which deregisters a vehicle from the national vehicle database on notification by the Authorised Treatment Facility.
 - The Hazardous Waste (England and Wales) Regulations 2005 – S.I. 2005/894: These regulations make rules for the controlled management of hazardous waste from the point of production to the final point of disposal or recovery.

- The End-of-Life Vehicles (Producer Responsibility) Regulations 2005 – S.I. 2005/2637: These regulations transfer into UK Law the aspects of the ELV Directive relating to producer responsibility for establishing collection systems to take back end-of-life vehicles free of charge and the arrangements for meeting re-use, recycling and recovery targets.
- The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 – S.I. 2007/871: These regulations partially transfer into UK law the Packaging Directive. The aim is to harmonise the management of packaging waste and prevent or reduce the impact of packaging and packaging waste on the environment by encouraging minimisation and reuse and by setting recovery and recycling targets.
- The Batteries and Accumulators (Placing on the Market) Regulations 2008 - S.I. 2008/2164: These regulations partially implement the Batteries Directive. These regulations require that new batteries (single use cells) and accumulators (commonly known as rechargeable batteries), or appliances containing batteries or accumulators that are placed on the market, must not contain prohibited levels of heavy metals, and that they must be labelled to show the presence of lead-acid, cadmium or mercury, and to promote recycling. They also provide that certain types of new electrical and electronic equipment must be designed in a way that facilitates the easy removal of waste batteries and accumulators for recycling purposes.
- The Waste Batteries and Accumulators Regulations 2009 - S.I. 2009/890: These regulations partially implement the Batteries Directive. These regulations establish the scope of ‘producer responsibility’, requiring producers of batteries and accumulators to take responsibility for separately collecting and recycling batteries and accumulators once they become waste.
- The Waste (England and Wales) Regulations 2011 - S.I. 2011/988: These regulations transpose the Waste Framework Directive in England and Wales. They require the appropriate authority to establish and review waste management plans and waste prevention programmes and place duties on those involved in waste management. These regulations also make provisions for the registration of waste carriers, brokers and dealers; written waste transfer notes; and require planning authorities and the appropriate authority to consider Articles in the Waste Framework Directive when exercising their planning and offshore licencing functions.
- The Waste Electrical and Electronic Equipment Regulations 2013 - S.I. 2013/3113: These regulations transpose the main provisions of the WEEE Directive. They provide that producers of electronic and electrical equipment will be financially responsible for managing the waste that arises from products they place on the market. Producers must also be registered with the regulators. These regulations require that systems must be established for the collection, treatment, recovery and environmentally sound disposal of most types of WEEE; and that the costs of these systems must be largely borne by WEEE producers.
- The Packaging (Essential Requirements) Regulations 2015 - S.I. 2015/1640: These regulations specifically implement Articles 9 and 11 of the Packaging Directive. They set the essential requirements that packaging must meet before it can be placed on the market. They provide enforcement authorities with powers for the enforcement of those obligations.

- The Environmental Permitting (England and Wales) Regulations 2016 – S.I. 2016 No. 1154: Schedule 10 of these regulations partially implements the Landfill Directive and Schedule 9 partially implements the Waste Framework Directive. These regulations set out an environmental permitting and compliance regime that applies to various activities capable of causing environmental pollution.

- 6.5 In parallel to the changes made by this instrument outlined in section 2, any amendments to Wales only legislation such as hazardous waste will be made by Welsh Ministers, in free-standing, Wales-only regulations. Scotland will also make amendments to Scotland-only legislation as necessary to transpose the CEP fully in Scotland. The Department of Agriculture, Environment and Rural Affairs (“DAERA”) will be making the legislative changes to waste legislation, which is only applicable in Northern Ireland, as required to transpose the 2020 CEP measures on behalf of Northern Ireland.
- 6.6 The Welsh Ministers will be seeking the consent of Senedd Cymru (Welsh Parliament) for the Secretary of State to make the legislative changes in this instrument on their behalf in relation to those aspects that amend primary legislation.

7. Policy background

What is being done and why?

- 7.1 The UK is committed to moving towards a more circular economy which will see us keeping resources in use as long as possible, extracting maximum value from them, minimizing waste and promoting resource efficiency. The UK’s ambition to move to a circular economy is reflected in many of the changes required as part of the CEP. The CEP introduces a revised legislative framework, identifying steps for the reduction of waste and establishing an ambitious and credible long-term path for waste management and recycling.
- 7.2 The amendments in this instrument include the alignment across three Directives of definitions, terms and powers, plus measures to tackle specific waste issues.
- 7.3 In terms of CEP measures to be transposed by 2020, a combination of non-legislative changes (e.g. changes to guidance) and legislative changes with a minor impact (mainly ‘copy out’ i.e. the implementing legislation adopts the same wording as that of the Directive), will transpose most of the requirements of the CEP.
- 7.4 The bulk of substantive changes to laws, regulations and administrative provisions made under the CEP affect two Directives:
- The Waste Framework Directive
 - The Landfill Directive
- 7.5 Measures are to be taken to prevent waste generation and to monitor and assess the implementation of those measures. These measures must be included in waste prevention programmes (see Section 7.10 below).
- 7.6 Requirements for separate collection of waste are amended to provide more detail on the circumstances under which separate collection of waste is not necessary to ensure that waste undergoes preparing for reuse, recycling, or other recovery operations (see regulation 15(7) and (8) for transposition of this into legislation for England and Wales).

- 7.7 Amendments will ensure that waste collected separately for preparing for re-use or recycling is not incinerated or landfilled, except for waste resulting from subsequent treatment operations of the separately collected waste for which incineration or landfilling delivers the best environmental outcome in accordance with the waste hierarchy. The Environmental Permitting (England and Wales) Regulations 2016 are amended to introduce a new statutory permit condition on waste incinerators and landfills, placing restrictions on waste paper, metal, plastic and glass separately collected for preparing for re-use or recycling from being accepted for incineration or landfilling (see regulation 21(5) and (6)(b)).
- 7.8 Unlawfully mixed hazardous waste will now have to be separated where that is technically feasible. Economic viability of separation is no longer a consideration. Lawfully mixed hazardous waste must be treated at a permitted facility. This is being implemented in England by amending the Hazardous Waste (England and Wales) Regulations 2005 (see regulation 9(5)). Amendments to the Hazardous Waste (England and Wales) Regulations 2005 also require that mixing waste oils is prohibited only where mixing would impede the regeneration, or other recycling operation of the waste oil delivering an equivalent or a better overall environmental outcome, in accordance with the waste hierarchy (see regulation 9(4)).
- 7.9 Additional matters must now be included in waste management plans. These requirements are being met by amending regulation 8 of, and Schedule 1 to, the Waste (England and Wales) Regulations 2011 (see regulation 15(6) and (10)).
- 7.10 In establishing waste prevention programmes, further measures must be included. These requirements are being met by amending the Part 2 of, and Schedule 1 to, the Waste (England and Wales) Regulations 2011 (see regulation 15(3) to (5) and (10)).
- 7.11 Regulations are amended to require certain establishments and undertakings to keep records of the quantity of materials and products resulting from the treatment of hazardous waste. The Environmental Permitting (England and Wales) Regulations 2016 are being amended to require relevant waste operations, which operate under a registered waste exemption, to record, retain and submit specific information on hazardous waste and the products and materials resulting from the treatment of hazardous waste (see regulation 21(3) of this instrument). Sites that treat hazardous waste under an environmental permit will be required, under existing permit conditions, to record, retain and submit this information to the relevant regulators.
- 7.12 The UK Government and the devolved administrations have previously consulted on some measures on packaging, which meet the Resources and Waste Strategy and the Welsh Government's Circular Economy Strategy commitment to extend producer responsibility for packaging¹. Changes being made in this instrument are minor and consist of updates to definitions, including a clarification that oxo-degradable plastics should not be classified as biodegradable.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union and thus does not require the statement requirements under the European Union (Withdrawal) Act 2018.

¹ <https://www.gov.uk/government/consultations/packaging-waste-changing-the-uk-producer-responsibility-system-for-packaging-waste>

9. Consolidation

9.1 No consolidation is considered necessary.

10. Consultation outcome

- 10.1 During the negotiations of the CEP, Defra held regular discussions with key stakeholders on the possible implications of the proposals. The UK and Welsh, Scottish and Northern Ireland Governments have decided that these measures will be transposed as described in the public statement, without a formal consultation, given the changes are relatively minor and technical.
- 10.2 However, Defra conducted a light-touch form of engagement with local authority groups and key representatives of the landfill, incineration and recycling sector in relation to the restrictions on incinerating or landfilling waste separately collected for preparing for re-use or recycling. The aim of these discussions was to inform industry of the proposed legislative changes and how they would be implemented, and to seek their views on those changes. These measures were broadly welcomed by the sector who saw them as a driver to encourage treatment of material further up the waste hierarchy by ensuring higher levels of extraction of recyclable material from the waste stream. Any concerns raised were either settled during the discussion or resolved by clarifications afterwards.
- 10.3 The following public statement was released on 29 July 2020 which outlined how the CEP measures would be transposed (transferred into UK law), see:
<https://www.gov.uk/government/publications/circular-economy-package-policy-statement/circular-economy-package-policy-statement>.

11. Guidance

11.1 Guidance to industry regarding the changes covered in this instrument will be published in due course. Further implementation of the CEP in Scotland, Wales and Northern Ireland will also include updated guidance, as relevant.

12. Impact

- 12.1 There is no impact on charities or voluntary bodies from the measures in this instrument.
- 12.2 The impact on the public sector is additional Regulator costs in ensuring operators submit additional information and advise on new requirements (£0.05m); Government cost of amending IT systems (£0.17m) and loss in tax revenues (£3.3m). No new burdens were identified on local authorities.
- 12.3 An Impact Assessment has not been prepared for this instrument. Instead a Regulatory Triage Assessment (RTA) has been prepared which demonstrates that the measures in this instrument have an equivalent annual net direct cost to businesses below the +/- £5m threshold.
- 12.4 The analysis in the RTA indicates that the impact on businesses across the UK (all over a ten-year period, discounted) are as follows:
- adjustment and administrative costs to hazardous waste site operators in submitting additional information (£0.8m);
 - administrative costs of adjusting to new requirements (£15.9m);

- additional net costs to private business waste holders (£1.4m); and
 - additional net benefit to Mechanical Biological Treatment (MBT) plants or other treatment (£6.5m), additional net benefits to recycling centres (£0.5m).
- 12.5 The undiscounted costs for private waste holders will be £1.6m compared to £0.9m for local authorities over a ten-year period.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses. No action is considered necessary to minimise the impact on small businesses given the low level of impact expected, as described below.
- 13.2 Costs to individual businesses are proportional to the volume of waste handled, which in turn is expected to be proportional to turnover.
- 13.3 We estimated that micro and small waste collection businesses would encounter total annual net costs of £13,000 and £2,000, respectively. Additional costs to micro and small waste holders represent only 0.001% of their turnover.
- 13.4 We estimate that micro and small business landfill operators would expect total additional annual costs of £3,000 and £4,000, respectively. Small incinerator businesses would see additional net costs of £0.12m annually. Additional net costs to micro and small landfill operators and small incinerator operators represents only 0.0082% of the estimated turnover of micro and small non-hazardous waste treatment and disposal businesses.

14. Monitoring & review

- 14.1 No further review clause is necessary in this instrument as the main pieces of legislation that this instrument is amending contain review clauses and the costs to businesses is below the +\-£5m threshold.

15. Contact

- 15.1 Kathryn Arnold at the Department for Environment, Food and Rural Affairs, Telephone: 02080 255306 or email: Waste-EUExit@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Chris Preston, Deputy Director for Resources and Waste Policy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.