

Explanatory Memorandum to the Waste (England and Wales) (Amendment) Regulations 2012

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Waste (England and Wales) (Amendment) Regulations 2012.

John Griffiths AM

17 July 2012

1. Description

The instrument amends the Waste (England and Wales) Regulations 2011 (SI 2011/988)¹ (“the 2011 Regulations”) to substitute regulation 13 and 14(2), to ensure the correct transposition of provisions of Directive 2008/98/EC (the revised Waste Framework Directive) relating to the separate collection of waste.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Composite regulations are appropriate as the change is to composite legislation, and in these regulations there is no policy difference between the Welsh Ministers and the Secretary of State.

The instrument is not being made bilingually as it amends an earlier composite England and Wales instrument.

The 2011 Regulations were made under section 2(4) of the Pollution Prevention and Control Act 1999 and section 2(2) of the European Communities Act 1972, and transposed, for England and Wales, the revised Waste Framework Directive². This instrument, which deals with a more limited transposition issue, is made solely under section 2(2) of the European Communities Act 1972.

Welsh Ministers are designated in relation to the prevention, reduction and management of waste under section 2(2) of the European Communities Act 1972. Under this power there is discretion whether to use a negative or affirmative procedure. Because some of the enabling powers for the 2011 Regulations required affirmative procedure, the whole of the instrument was made subject to affirmative procedure. The proposals in the 2012 Regulations are not using enabling powers subject to affirmative procedure, consequently, the affirmative procedure is not being used.

Judicial review proceedings were brought in relation to the way the 2011 Regulations transposed the requirements of the revised Waste Framework Directive relating to the separate collection of waste (dealt with in Articles 10 and 11 of that Directive). In December 2011, those proceedings were stayed until 13 June 2012, on the undertaking of the Welsh Ministers and Defra to consult on proposals to amend the 2011 Regulations. Following that consultation, this instrument is being made.

The instrument is being laid before recess, in keeping with an agreement with the Claimants and Interested Parties, to extend the stay of proceedings in the judicial review from 13 June to 25 July, to allow the Welsh Ministers and Defra time to lay amending regulations before that date .

¹ http://wales.gov.uk/topics/environmentcountryside/epq/waste_recycling/legislation/rwfd/?lang=en

² Directive 2008/98/EC on Waste and repealing certain Directives

3. Legislative background

The enabling power that is relied on is the designation of the Welsh Ministers in relation to the prevention, reduction and management of waste under section 2(2) of the European Communities Act 1972. The Welsh Ministers have the relevant enabling power by virtue of Article 3 of the European Communities (Designation) (No 2) Order 2010 (SI 2010/1552)³, which designated to the Welsh Ministers, power to make provision for the purpose of implementing any EU obligation in relation to the prevention, reduction and management of waste. In addition, Section 71 of the Government of Wales Act 2006 (GOWA 2006)⁴ provides that the Welsh Ministers may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of any of their functions.

This instrument is made on a composite basis with the Department for Environment, Food and Rural Affairs (Defra), and subject to annulment (the negative procedure).

Failure to transpose a European Directive correctly can lead to infringement proceedings⁵ by the European Commission.

4. Purpose & intended effect of the legislation

The Waste (England and Wales) Regulations 2011 transposed provisions of the revised Waste Framework Directive relating to the separate collection of waste paper, metal, plastic and glass. Regulation 13(2) of those Regulations provided that “For the avoidance of doubt, co-mingled collection (being the collection together with each other but separately from other waste of waste streams intended for recycling with a view to subsequent separation by type and nature) is a form of separate collection”.

Judicial Review proceedings were brought, challenging the transposition of the revised Waste Framework Directive and, in particular, the provision relating to co-mingled collection. The Welsh Ministers and Defra accepted that the original regulation 13 did not properly implement the requirements of the revised Waste Framework Directive in relation to separate collection, and that consequently the 2011 Regulations needed to be amended.

This instrument amends the 2011 Regulations by replacing regulation 13 so as to impose a duty on establishments and undertakings, from 1 January 2015, to separately collect waste paper, metal, plastic and glass. It also imposes a duty on waste collection authorities, from that date, when making arrangements for the collection of such waste, to ensure that those arrangements are by way of separate collection. These duties apply where separate collection is “necessary” to ensure that waste undergoes recovery operations in accordance with the Directive and to facilitate or improve

³ <http://www.legislation.gov.uk/uksi/2010/1552/contents/made>

⁴ <http://www.legislation.gov.uk/ukpga/2006/32/contents>

⁵ <http://ec.europa.eu/environment/legal/law/index.htm>

recovery; and where it is “technically, environmentally and economically practicable”. The duties apply to waste classified as waste from households and waste that is classified as commercial or industrial waste.

This instrument also replaces regulation 14(2) to reflect the changes to regulation 13 to ensure a consistent approach. Consequential changes are also made to reflect changes in paragraph numbering in the new regulation 13.

5. Consultation

A joint Welsh Government and Defra consultation was held between 23 February and 12 April. The consultation period was shortened because it related to a specific issue targeted at a specialist audience and to fit with the timetable of the Judicial Review and stay in proceedings provided by the Court of Administration. However, there was still wide consultation in order to give those interested an opportunity to respond. There were 21 responses in Wales, listed at **Annex 1**.

The joint consultee list is at **Annex 2** to this Explanatory Memorandum. The consultation paper and summary of responses are available at:

<http://wales.gov.uk/consultations/environmentandcountryside/wastereg13/?lang=en>

The joint Welsh Government and Defra response to the consultation is available on the same web link.

A copy of the consultation responses received in Wales will be placed in the Publication Centre, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

After considering the responses to the consultation, the approach to transposition was reconsidered. Rather than follow the exact text for amending regulations that was consulted on, the approach has been revised to a more direct reflection of the language of the Directive.

Regulation 15 of the Waste (England and Wales) Regulations 2011 provides that the appropriate authority (the Welsh Ministers, in relation to Wales, and the Secretary of State, in relation to England) may give guidance on the discharge of the duties in regulations 12 to 14. The Welsh Ministers and the Secretary of State each intend to produce and consult on statutory guidance to ensure a consistent understanding of what the obligations on separate collection mean.

6. Regulatory Impact Assessment

There is no additional impact on business, charities, voluntary bodies or the public sector. The amendment makes clear that separate collection of these four waste streams for recycling by 2015 is the basic requirement of the

Directive subject to the qualifications to this requirement as set out in the Directive.

As a result, a revised Regulatory Impact Assessment has not been produced. There is no change to the RIA⁶ produced previously for the consultation on the Waste (England and Wales) Regulations 2011.

⁶<http://www.assemblywales.org/bus-home/bus-third-assembly/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=209538&ds=2/2011>
and <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=209539&ds=2/2011>

Annex 1 - List of respondents⁷

Bridgend County Borough Council
Caerphilly County Borough Council
Campaign for Real Recycling (formed by members of the UK's leading materials re-processors, the community recycling sector and Friends of the Earth)
Cardiff Council
Carmarthenshire County Council
Central Wales Waste Partnership (CWWP) (includes Ceredigion and Powys Local Authorities)
Ceredigion County Council
City and County of Swansea
Commissioner for Sustainable Futures in Wales
Cwm Harry Land Trust Ltd (Social enterprise working with waste materials)
Cwm Taf Local Health Board (LHB)
Cylch (Representing the interests of the community recycling sector and social enterprises involved in preparation for re-use, recycling and composting of wastes)
Federation of Small Businesses
Institute of Civil Engineers Wales (ICE Cymru)
Local Authority Recycling Advisory Committee (LARAC)
Public Health Wales
Resource Association (Trade body for the reprocessing and recycling industries)
South West Wales Regional Waste Management Committee (includes Neath Port Talbot, Bridgend, Carmarthenshire, Pembrokeshire + Swansea Councils)
UK Recyclate (Social enterprise to trade recyclable materials)
Welsh Local Government Association (WLGA)

⁷ Bridgend, Carmarthenshire, Ceredigion and Swansea Councils made individual as well as part of a group response.

Annex 2

List of Consultees

Abertawe Bro Morgannwg University
Action Aid Recycling
ADAS
ADEPT
Advisory Committee on Packaging Members (ACP)
Age Concern
Alliance for Cartons & the Environment (ACE (UK))
Aluminium Federation
Aluminium Packaging Recycling Organisation (Alupro)
Aneurin Bevan Health Board
Ardagh Glass Sorting Limited
ASH in Wales
Assistant Police Liaison Officer
Associated British Ports
Association for Environment Conscious Building
Association for Public Service Excellence (APSE)
Association of London Cleansing Managers
Association of London Cleansing Officers
Association of the British Pharmaceutical Industry Wales
Association of National Park Authorities
Asthma UK Cymru
Axion Recycling Ltd
Betsi Cadwaladr Health Board
Biffa Waste Services
Biffpack
Black Environment Network (UK)
Black Voluntary Sector Network in Wales
Blaenau Gwent County Borough Council
Brecon Beacons National Park
Bridgend County Borough Council
British Glass Manufacturers' Confederation (British Glass)
British Glass Recycling
British Heart Foundation
British Lung Foundation
British Medical Association
British Metals Recycling Association
British Plastics Federation (BPF)
British Ports Association
BTCV Cymru
Caerphilly County Borough Council
Campaign for the Protection of Rural Wales
Campaign for Real Recycling
Can-Do Community Recycling Fraserburgh
Cardiff and Vale Local Health Board
Cardiff Council
Cardiff School of Biosciences

Cardiff University
Carmarthenshire County Council
Cash from Trash
Centre for Alternative Technology
Centre for Ecology and Hydrology
Centre for Remanufacturing and Reuse
Centriforce Products Ltd
Ceredigion County Council
Chartered Institute of Environmental Health
Chartered Institute of Waste Management Wales
Chartered Institution of Water and Environmental Management
Chase Plastics Ltd
Chester, Ellesmere Port & North Wales Chamber of Commerce
Chilton Waste
City and County of Swansea
Civic Trust for Wales
Civil Engineering Contractors association (CECA)
Cleanapack
Clothes Aid Services Ltd
Coed Cymru
Coethical Limited
Commission for racial Equality Wales Office
Community People
Community Recycling Network - London (LCRN)
Community Recycling Venture
Community West Recycling Partnership
Complete Wasters
Confederation of British Industry Wales
Confederation of Paper Industries
Confederation of Passenger Transport
Constructing Excellence Wales
Conwy County Borough Council
Cory Environmental
Country Land & Business Association
Countryside Council for Wales
Creation Recycling Ltd
Cwm Taf Health Board
Cylch - Wales Community Recycling Network
Cyngor Gwynedd Council
Denbighshire County Council
DS Smith Paper Limited
EMERGE Recycling
Energy Saving Trust Wales
Engineering Employers Federation Wales
Environment Agency Wales
Environment Council
Environment Industries Commission
Environment Trust, The
Environment Wales
Environmental Industries Commission (EIC)

Environmental Packaging Solutions
Environmental Protection UK - Wales
Environmental Resources Management (ERM)
Environmental Service Group Limited
Environmental Services Association (ESA)
Environmental Trust Scheme Regulatory Body (Entrust)
Environmental Waste Controls plc
Envirowise
Equality & Human Rights Commission
EQ Waste Management
European Metal Packaging (EMPAC)
Farming and Wildlife Advisory Group (FWAG Cymru)
Federation of Environmental Trade Associations (FETA)
Federation of Master Builders for Wales
Federation of Small Businesses
Flintshire County Council
Forestry Commission Wales
Forum for the Future
Forum of Private Business (FPB)
Four Communications Group on behalf Waste Recycling Group
Friends of the Earth
Global Action Plan
Greater London Authority (GLA)
Greater Manchester Waste Limited
Green Alliance
Green Beacons Recycling
Green Business Network (GBN)
Greenpeace
Grosvenor Waste Management Ltd
Groundwork Wales
Grundon Waste
Halcrow Group Ltd
Health and Safety Executive
Hybu Cig Cymru (Meat Promotion Wales)
Hywel Dda Health Board
Independent Waste Paper Processors Association (IWPPA)
Industrial Packaging Association, The (IPA)
Industry Council for Packaging & the Environment
Institute of Biological Sciences, Cardiff University
Institute of Directors Wales
Institute for Environment & Health
Institute for European Environmental Policy (IEEP)
Institute of Directors
Institute of Environmental Management & Assessment
Institute of Environmental Science
Institute of Geography and Earth Sciences
Institute of Grassland and Environmental Research
Institute of Packaging
Institute of Rural Studies
Institute of Welsh Affairs

Institute of Civil Engineers
Isle of Anglesey County Council
JBT Waste Services Limited
Keep Britain Tidy
Keep Wales Tidy
LARAC
Lazarus Environmental Ltd
Local Authority Recycling Advisory Committee (LARAC)
Local Government Association (LGA)
Local Government Planning and Environmental Bar Association
London Community Resource Network (LCRN)
London Councils
London Recycling Consortium
London Waste and Recycling Board
May Gurney Ltd
Mayer Parry Recycling Ltd
Merthyr Tydfil County Borough Council
Metal Packaging Manufacturers Association (MPMA)
Monmouthshire County Council
National Association of Waste Disposal Officers (NAWDO)
National Farmers Union Wales
National Public Health Service
Neath Port Talbot County Borough Council
Network Recycling
New Earth Solutions
New Local Government Network
Newport City Council
NFU Cymru
Norfolk Environment Waste Services Limited
North East Recycling Ltd
North Wales Economic Forum
Novelis UK Ltd
NTech Environmental
Older Peoples Commission for Wales
One Voice Wales
Oxford Environmental Change Institute
Packaging & Industrial Films Association
Packaging Federation
Palm Paper Limited
Paper Agents Association
Paper Chasers, Birmingham
Paperchain Recycling Ltd
Paperpak Ltd
Pembrokeshire Coast National Park
Pembrokeshire County Council
Plaid Cymru
Plastics Sorted Limited
Police Liaison Officer
Powys County Council
Powys Teaching Health Board

Premier Waste Management Ltd
Prime Recycling
Princes's Trust Wales
Public Health Wales NHS Trust
RECYC
Recycle IT!
Recycling Consortium
Recycling Industries Alliance
Recycling of Used Plastics Limited
Recyclo Ltd
Resource Association
Resource Recovery Forum
Rhondda Cynon Taf County Borough Council
RICS Wales
Royal Pharmaceutical Society
RSPB Cymru
SafetyKleen UK Ltd
Save Waste and Prosper Ltd (SWAP)
SCA Recycling
Scarborough Authorised Reuse Centre Ltd (SCARCE)
School of Biological Sciences, University of Wales
Seaford Partnership Waste Forum
Seagulls Re-use
Shanks Waste Management Ltd
Shields Environmental
Simply Green Recycling Ltd
SITA UK Ltd
Small Business Service
Smurfit Kappa Group
Snowdonia National Park
SPARK Pic
Sterecycle
Sterile Technologies Group
Stonewall Cymru
Sustainable Energy
Sustainability First
Sustainability Northwest
Sustainable Organic Resources Partnership (SORP)
Sustainable Recycling Solutions UK Ltd
Sustainable Wales
Sustainalite Ltd
Swap - Save Waste And Prosper Ltd
SWS Compak Ltd
TEG Environmental Limited
Textile Recycling Association
The Carbon Trust in Wales
The Church in Wales
The Recycling Consortium (TRC)
The Sustainable Environment Research Centre
The Wales Environmental Standards Group

Torfaen County Borough Council
Tradebe Waste Management
TUC Cymru
UK Environmental Law Association (UKELA)
UK Recyclate Ltd
University of Wales Trinity St David
Vale of Glamorgan Council
Valpak Limited
Veolia Environmental Services
Velindre NHS Trust
Viridor Waste Management Limited
Wales Automotive Forum
Wales Biomass Centre
Wales Council for Voluntary Action
Wales Environment Trust
Wales Environmental Link
Wales Social Partners Unit Ltd
Waste Management Industry Training & Advisory Board (WAMITAB)
Waste Recycling Foundation Ltd
Waste Recycling Group Ltd
Waste Watch
Wastefile UK
Wastepack
WasteWISE
Welsh Agriculture Organisations Society
Welsh Ambulance Service NHS Trust
Welsh Association of Chief Police Officers
Welsh Conservative Party
Welsh Environmental Services Association (WESA)
Welsh Institute of Rural Studies
Welsh Labour Party
Welsh Liberal Democrats
Welsh Local Government Association
Welsh School of Architecture, Cardiff University
West Wales ECO Centre
White Rose Consortium
White Rose Environmental
Windsor Waste Management
Women's Environmental Network
WRAP
Wrexham County Borough Council
WWF Cymru
Zero Waste Alliance UK