

EXPLANATORY MEMORANDUM TO
THE WASTE (MEANING OF RECOVERY) (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2016

2016 No. 738

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to various enactments which define waste “recovery” by reference to Directive 2008/98/EC of the European Parliament and of the Council on waste (the Waste Framework Directive, “WFD”). The amendments update these references to reflect the amendment made to Annex II to the WFD by Commission Directive (EU) 2015/1127.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The WFD provides the legislative framework for the collection, transport, recovery and disposal of waste, and includes a common definition of waste. The WFD defines waste ‘recovery’ in part by reference to a non-exhaustive list of recovery operations in Annex II to the WFD. An incineration facility dedicated to the processing of municipal solid waste as a fuel to generate energy is classed as an R1 recovery operation under the list provided that it meets the energy efficiency threshold calculated in accordance with the energy efficiency formula in Annex II.
- 4.2 Commission Directive (EU) 2015/1127 amended Annex II to the WFD by inserting a climate correction factor (‘CCF’) into that formula. The instrument implements Commission Directive (EU) 2015/1127 by updating references to the WFD in enactments which define waste “recovery”. The effect of section 20A of the Interpretation Act 1978 (c.30) is that each updated reference to the WFD is to the WFD as last amended by Commission Directive (EU) 2015/1127.

5. Extent and Territorial Application

- 5.1 The extent of each amendment made by this instrument is that same as the provision it amends.

- 5.2 The territorial application of each amendment made by this instrument is the same as the provision it amends, except the amendments made by regulations 8 (to the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675)) and 10 (to the Waste (England and Wales) Regulations 2011 (S.I. 2011/988)) which apply to England only.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

“In my view the provisions of the Waste (Meaning of Recovery) (Miscellaneous Amendments) Regulations 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 For an incineration facility dedicated to the processing of municipal solid waste to generate energy to be classified as a waste recovery operation rather than a waste disposal operation, it needs to meet the energy efficiency threshold calculated in accordance with the energy efficiency formula at Annex II to the WFD for R1 recovery operations. The differences in climate across the EU mean that ‘energy from waste’ production varies, and it is technically more difficult to produce energy from waste in temperate climates than in colder climates. Facilities in colder climates therefore have an advantage in both producing and using energy more efficiently.
- 7.2 A report by the Joint Research Centre of the European Commission showed that in order to achieve a level playing field for energy from waste production in the EU it was reasonable to introduce a CCF into the R1 operation energy efficiency formula. Commission Directive 2015/1127 amends the formula at Annex II to the WFD accordingly. The introduction of the CCF will enable some incineration facilities in warm climates currently classed as waste disposal operations to meet the energy efficiency threshold and be classed as R1 waste recovery operations.
- 7.3 The CCF is a minor change designed to ameliorate a disadvantage that is common to incineration facilities in the warmer climates of southern EU member States. It will have a negligible effect on UK incineration facilities, given that the UK’s colder climate (see further Section 10.1).

Consolidation

- 7.4 There are no current plans to consolidate the various enactments amended by this instrument.

8. Consultation outcome

- 8.1 In accordance with section 2(4) of the Pollution Prevention and Control Act 1999 (c.24), in January 2016 Defra and the Welsh Government launched a joint targeted consultation on the proposed implementation of Commission Directive 2015/1127. The consultation lasted four weeks and sought the views of the Environment Agency, Natural Resources Body for Wales and representatives of the relevant sectors of UK industry. The consultation was focused solely on the implementation of the Directive as the UK industry had already been consulted about the CCF during the negotiations in Brussels in 2015.

- 8.2 Given the minor nature of the changes made by Commission Directive 2015/1127 and the negligible, if any, effect that the introduction of the CCF would have in the UK, a shorter, focussed consultation was appropriate.
- 8.3 Defra received three responses to the consultation. One response was content with the implementation method proposed. The other two responses were also content with the proposed implementation method, and that the CCF applied so that all incineration facilities across Europe are assessed on a level playing field. The responses were concerned about the nature of the evidence required as part of the operation of the CCF which was outside the scope of the consultation.
- 8.4 The Welsh Government received two responses, both of which were supportive of the proposed implementation of Commission Directive 2015/1127.
- 8.5 The consultation and the Government response can be found at the following website: <https://www.gov.uk/government/consultations/energy-from-waste-changing-the-energy-efficiency-formula-r1-formula>

9. Guidance

- 9.1 There will be no additional specific guidance provided to the industry regarding the introduction of the CCF. However, when the current recovery operation guidance is revised the Environment Agency will ensure that there is a reference to the CCF.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is expected to be negligible, if any. Incineration facilities are not obliged to seek classification as an R1 waste recovery operation. Such status is sought voluntarily, generally as formal recognition of efficiency. The introduction of the CCF within the R1 operation energy efficiency formula will not result in the declassification of an existing UK R1 waste recover operation, and will not make it more difficult for a UK incineration facility to obtain that status. There is a possibility that the increase of R1 status facilities in southern Europe could increase capacity for the UK to export Refuse Derived Fuels (“RDF”) to that area. However, the main destination countries for UK RDF exports (countries in Northern Europe) are unlikely be directly affected by the CCF.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The basis for the final decision on what action to take to assist small business is that, as stated above, it is not a mandatory requirement for a UK incineration facility to obtain classification as a R1 waste recovery operation. Further, the introduction of the CCF will have a negligible, if any, effect on existing UK R1 operations and on UK incineration facilities wishing to obtain R1 status in the future.

12. Monitoring & review

- 12.1 The instrument does not make or amend regulatory provision (within the meaning of that term as defined in section 32(4) of the Small Business, Enterprise and

Employment Act 2015 (c. 26)) and so the duty under section 28 of that Act does not apply.

- 12.2 As the impact of the instrument is likely to be negligible in the UK we do not intend to specifically monitor or review it.

13. Contact

- 13.1 Paul Chapinal at the Department for Environment, Food and Rural Affairs (Telephone: 020 8026 3845 or email: paul.chapinal@defra.gsi.gov.uk can answer any queries regarding the instrument.