

## **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)<sup>1</sup> (“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 Directive<sup>2</sup>. 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 .

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<sup>1</sup> [http://wales.gov.uk/topics/environmentcountryside/epq/waste\\_recycling/legislation/rwfd/?lang=en](http://wales.gov.uk/topics/environmentcountryside/epq/waste_recycling/legislation/rwfd/?lang=en)

<sup>2</sup> 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)<sup>3</sup>, 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)<sup>4</sup> 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 proceedings<sup>5</sup> 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

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

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

<sup>5</sup> <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 RIA<sup>6</sup> produced previously for the consultation on the Waste (England and Wales) Regulations 2011.

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<sup>6</sup> <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 respondents<sup>7</sup>

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

<sup>7</sup> 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 Plc  
Stereecycle  
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