



# **The Waste (Recyclate Quality) (Scotland) Regulations 2015**

**FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT**

## ***TITLE OF PROPOSAL***

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1. The Waste (Recyclate Quality) (Scotland) Regulations 2015, incorporating amendments to:
  - The Waste Management Licensing (Scotland) Regulations 2011.
  - The Pollution Prevention and Control (Scotland) Regulations 2012.

## ***PURPOSE AND INTENDED EFFECT***

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### ***Background***

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2. A key feature of Scotland's Zero Waste Plan (the Plan) is that waste should be seen as a resource. Recyclable materials discarded after use should be sorted for reuse or recycling, leaving only limited amounts left in residual waste for other recovery or disposal. The Plan also includes a 70% recycling target for all waste by 2025. It also looks to encourage local authorities and the waste and resource management sector to establish commitments to achieving good practice and work together to create consistent waste management services.

3. The Plan also has a commitment to achieving "high quality recycling" which will require a focus on added value end use applications, such as closed loop recycling, as opposed to down-cycling where recovered waste materials are put to uses from which little economic or environmental benefit accrues.

### **High quality materials**

4. The quality of waste materials delivered to and despatched from Material Recovery Facilities (MRFs) is key to achieving these elements of the Plan. Excessive contamination (expressed as non-target and non-recyclable material) of input materials can affect the operation of a facility and the quality of outputs. Poor or variable quality of outputs can adversely affect the end use application, end market acceptability and the price per tonne. If the sorting process is sub-optimal, good quality recyclables can either remain in the residual material stream (to landfill or energy from waste) or be incorrectly routed to the wrong output stream. All of these factors suggest that quality standards should be more rigorously applied across the supply chain and that actual quality of all material streams should be measured.

5. High quality materials and accurate information are vital to reprocessors. Although moves have been made to introduce and improve the monitoring of material going into and out of MRFs, many waste management companies still do not measure and communicate quality metrics. As a result, reprocessors do not receive relevant information, and this lack of robust and consistent information on the quality of MRF outputs undermines the ability of reprocessors to confidently predict or assess the composition of the material they are buying. Subsequently, reprocessors often find the price paid for

material does not necessarily reflect its composition once received at the reprocessing facility. This is clearly an unsatisfactory situation which must be addressed in order to provide more clarity and certainty, not just in Scotland, but to the UK reprocessing sector as a whole. This will help to encourage new investment in a sector that will become increasingly important in the drive towards more efficient use of resources.

6. High quality recycling can also help increase public confidence and participation in recycling. Householders and businesses want to know that the action they are taking is making a genuine contribution towards protecting the environment and safeguarding resources. If it transpires that material collected for recycling is sent to landfill or illegally exported, then this could undermine confidence and damage future efforts to increase recycling rates.

## ***OBJECTIVE***

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7. The measures that were set out in the Recyclate Quality Action Plan consultation paper sought to:

- Drive up the quality of materials being recycled;
- Create greater transparency in the market place around the quality of recyclable materials;
- Help ensure that those contracting with sorting facilities know what they are contracting for;
- Ensure that all persons responsible for managing waste are complying with the source segregation and quality provisions set out in the Waste Regulations;
- Stimulate a robust and vibrant home market for the sale and reprocessing of quality recyclates;
- Reduce the number of issues arising under the Waste Shipment Regulations;
- Meet the requirements of the revised Waste Framework Directive.

## ***RATIONALE FOR GOVERNMENT INTERVENTION***

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8. The Scottish Government is committed to the development of a healthy and robust reprocessing sector in Scotland, serviced by a thriving waste sector which delivers quality materials thereby removing the need for reprocessors to look to overseas markets to supply the quality they require.

9. The waste management, recycling and reprocessing industries are, in the scheme of things, relatively new sectors, and as the sophistication and scale of reprocessing in the UK and overseas expands, there is a pressing need to improve the quality of materials and create greater transparency around reporting of material quality.

10. This is not about interfering with the free trade of materials; it is about creating a transparent and level playing field for each actor in the supply chain- from waste collector to material reprocessor.

11. Poor quality recyclates are of concern because they undermine the efforts to maximise the viability and wider benefits of recycling. There are also environmental and economic costs associated with poor quality recycle.

12. Despite a move by some waste management companies to implement and improve monitoring of material flowing into and out of MRFs many still do not measure and communicate quality metrics. Any previous monitoring system has been voluntary, and feedback from MRF operators indicate that this was the reason for its ineffectiveness as many of them felt compliance with a system where not all operators participated, left them at a disadvantage.

13. Consequently, reprocessors often do not receive relevant information (and nor do local authorities know what issues are arising from their collections). This lack of robust and consistent information on the quality of MRF outputs, undermines the ability of reprocessors to confidently predict or assess the composition of the material they are purchasing. Subsequently, reprocessors often find that the price paid for material does not necessarily reflect its composition once received at the reprocessing facility. This is an unacceptable situation, and would be unlikely to be accepted in other areas of business.

14. Clarity and certainty around the quality of recycled materials placed on the market will also help send the right market signal to the UK reprocessing sector that will help create the confidence needed to invest in the expansion of Scotland's, and the UK reprocessing sector, a sector that will become increasingly important as the drive toward a more efficient use of resources and more sustainable product use and design continues.

### **Legal Drivers**

15. It is necessary for Member States to demonstrate compliance with the requirement in Article 11 of the revised Waste Framework Directive – 2008/98/EC (rWFD) to promote high quality recycling. These proposals would enable MRF operators to demonstrate that they are meeting the necessary quality standards for the relevant recycling sectors.

16. European Commission guidance has made clear that under the revised Waste Framework Directive (rWFD), co-mingling of recyclable materials is only permitted where it meets the necessary quality standards for the relevant recycling sector and promotes high quality recycling. The rWFD itself clearly states:

17. “Member States shall take measures to promote high quality recycling and set up separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors”.

18. The Waste (Scotland) Regulations 2012 (“the regulations”) require that key dry recyclables (paper, card, glass, plastics and metals) be separately collected from both businesses and households from January 2014. This means that a separate container is required for each material and the subsequent handling must be sufficient to maintain that separation through the management chain.

19. The Scottish Government recognises however that full separation may not be practicable in all circumstances and may not always be necessary if the aim of high quality can be achieved through a co-mingled approach. The regulations therefore include a derogation from the separate collection requirement and permit co-mingling where the following can be demonstrated:

- the quality and quantity of waste collected for recycling is not significantly less than that which would result from a fully segregated separate collection;
- the waste is not mixed with other waste that cannot be recycled;
- the waste can meet and relevant quality standard; and
- the waste is managed in a manner that promotes high quality recycling.

20. The Duty of Care Code of Practice published in October 2012 also makes clear that whilst co-mingling is permissible, it must only be done where material quality is not compromised. The Code can be found here: <http://www.scotland.gov.uk/Resource/0040/00404095.pdf>.

21. The measures that we are putting in place will provide a mechanism by which the effectiveness of materials sorting at recovery facilities can be measured and reported against.

22. The Scottish Government is developing proposals for a circular economy roadmap, which is likely to contain actions to maximise reprocessing and remanufacturing opportunities in Scotland and encourage new inward investment in these areas. Scotland’s ability to deliver consistently high quality materials to the market in a managed and coordinated manner will be key to the realisation of these opportunities and to ensuring also that the benefits to those who collect and bring these materials to the market are maximised.

23. Exports of recyclate to OECD and some non-OECD countries are permitted under the “green list” controls of the EU Waste Shipments Regulation. Exports of sorted recyclate are permitted as “green list” waste under the Waste Shipments Regulation and can be undertaken without prior written notification and consent from SEPA.

24. The Regulation does not set a limit for the level of contamination that is acceptable in a “green list” export. The export of waste contaminated to the extent that it would prevent recovery in an environmentally sound manner is prohibited. Materials should not need to be further sorted in the country of destination.

25. Such exports are illegal and the Scottish Environmental Protection Agency (SEPA) will take action against such activity. The shipment of waste that needs to be pre-sorted before recycling would not fall under “green list” controls and would either be “notifiable” where prior written notification and consent is required from the relevant authorities, or banned depending on where the waste was destined. Improved quality measurement and reporting will make it easier for SEPA to target regulatory effort on the lowest quality material.

## ***CONSULTATION***

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### ***Public consultation***

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26. Consultation on a number of measures linked to improving the quality of recyclable materials collected, sorted and presented to the market in Scotland and beyond took place between October and December 2012. The consultation paper with our original proposals can be found here: <http://www.scotland.gov.uk/Resource/0040/00404123.pdf>.

27. The Scottish Government’s consultation paper set out four key areas for possible targeted action. Briefly, these were:

#### **Material Sampling and Composition Testing**

28. Establishment of a statutory arrangement such that, all MRFs located in Scotland that sort mixed dry recyclate (above a minimum throughput tonnage) measure the composition of inputs and outputs at minimum frequencies using a standardised approach.

#### **Making Material Testing Results Transparent to all Stakeholders**

29. Deliver transparency, by requiring MRF operators to electronically submit to SEPA quarterly summary reports containing information on the sampling and testing that has been undertaken.

#### **Benchmark Standards for paper, card, plastics, metals and glass**

30. The Waste (Scotland) Regulations 2012 include a provision that permits dry recyclates from households to be collected in a co-mingled manner provided that they can be sorted at a MRF to a standard comparable in quality to materials that have been separately collected at kerbside.

31. There is currently no robust information on what constitutes the average level of contamination (non-target or non-recyclable material) in dry recyclate (paper, card, plastics, metals and glass) that has been separately collected.

32. One way to obtain this information would be to undertake a wide-ranging composition analysis of existing facilities that receive separately collected material. This could be done at either the bulking or waste transfer stations

that receive material from the collection vehicles or at reprocessors where such materials are subsequently received for processing.

33. The proposals on which we consulted proposed that Zero Waste Scotland and WRAP undertake a joint UK-wide study of waste transfer / bulking stations to determine the average quality of each of the key recyclate streams. The results of this study would be used to establish a minimum standard for individual materials that must be achieved when sorting materials that have been collected co-mingled. Failure to meet this required standard would necessitate remedial action by the MRF operator. This study has since concluded and the report can be found here:

<http://www.zerowastescotland.org.uk/sites/files/wrap/Contamination%20in%20source-separated%20municipal%20and%20business%20recyclate%20in%20the%20UK%202013%20240314.pdf>.

### **Voluntary Grading System**

34. The adoption of a grading system for paper, card, plastics, metals and glass to provide the market with further confidence that the price being paid would indeed reflect the quality of the materials actually received. This was proposed in order to enable the MRF operators to set out clear pricing structures based on material grade and quality. With higher prices expected to be paid for the higher grades of material, it would also send a clear signal that quality does matter.

35. It was proposed that there would also be a maximum contamination limit for each key material stream based around the contamination levels for separate collection. Where this level was exceeded, sorting processes would require adjustment until it achieved at least the minimum acceptable marketable grade.

36. It was proposed that adoption of any grading system would be on a voluntary basis. It was recommended that should the consultation process identify a willingness on the part of stakeholders to adopt a voluntary grading system then Zero Waste Scotland (ZWS), Waste and Resources Action Plan (WRAP) and the industry should work together to develop and implement it across the sector.

### **Consultation Responses**

37. There were 38 responses to the consultation received from a range of stakeholders, and these have been summarised in the consultation report which can be found here:

<http://www.scotland.gov.uk/Resource/0044/00440670.pdf>. The breakdown of respondents was as follows:

*Summary of respondents*

<b>Respondent Group</b>	<b>Total responses received</b>	<b>% of total responses</b>
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<b>Respondent Group</b>	<b>Total responses received</b>	<b>% of total responses</b>
Local Authority and Representative Bodies	11	28.9%
Professional/ Representative/ Trade Body	8	21.1%
Waste Management – Material Collection/ management	4	10.5%
Waste Management – Material Processing (MRFs)	4	10.5%
Reprocessors and Manufacturers	8	21.1%
Drink manufacturing Companies/ Body	3	7.9%
<b>TOTAL</b>	<b>38</b>	<b>100%</b>

### **Direct business engagement**

38. In addition to the written public consultation the Scottish Government asked Zero Waste Scotland (ZWS) to meet with a number of operators of materials recovery facilities in order to obtain direct feedback on our proposals. A total of 7 interviews took place- 2 at local authority managed facilities and 5 privately operated. In addition to these interviews, there has been regular engagement with the Resource Association, a body representing materials reprocessors (those buying recyclable materials and turning them back into useful products). Operators of materials recovery facilities along with reprocessors will be the key sectors affected by the new measures being introduced.

39. A further 6 interviews with operators of materials sorting facilities took place in August 2013. These were undertaken to further explore the cost implications of having to establish a testing and reporting regime for input and output materials. More detail on these interviews is provided in section 7.

### **Partner Liaison**

40. The Scottish Government liaised with Zero Waste Scotland, SEPA and COSLA on the development of both the consultation paper and the Business and Regulatory Impact Assessment.

## ***OPTIONS CONSIDERED***

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41. The options that were set out in the consultation paper for stakeholder consideration were as follows:

### ***OPTION 1 – do nothing (baseline scenario)***

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## **Benefit**

42. No intervention by the Scottish Government. This would maintain the status quo and rely on secondary material markets to drive up quality.

43. However, the “do nothing” option would not provide the clarity and certainty the industry and stakeholders require to maintain a level playing field for each stage of the recycle supply chain.

## **Costs**

44. No additional costs incurred. However, the potential benefits outlined in options 2 and 3 below would not be realised.

45. Under option 1 there is also the possibility that infraction proceedings could be initiated by the European Commission for failing to comply with Article 11 of the rWFD which states that high quality recycling must be promoted. When reporting to the Commission on compliance, as part of the UK report, Scotland will be required to demonstrate how it is delivering this ‘quality’ and without robust and accurate information on the standards of recycle being produced by MRFs, it will be difficult to provide sufficient evidence to demonstrate compliance.

## ***OPTION 2 – The introduction of mandatory testing of MRF inputs and outputs with transparent reporting of test results. No quality benchmark however and no voluntary material grading system introduced.***

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## **Benefit**

46. Mandatory sampling of inputs and outputs by waste management companies, with transparent reporting of test results, would provide reprocessors with access to robust data, thereby allowing them to make confident predictions and assessments on the quality of MRF outputs and drive them towards MRFs that produce consistently higher quality material.

47. This increased confidence in the quality of recycle should help support economic growth and the green economy by maximising the economic value of the waste material collected. Higher income levels from the sale of quality recycles should also return value to local authorities and businesses.

48. The delivery of high quality materials for recycling should also improve confidence in the UKs reprocessing sector and provide it with access to a reliable stream of recovered quality materials. This has the potential to act as a catalyst for investment and growth in the sector.

49. There are also other likely benefits associated with an increase in recycling, not least of which is a reduced need to extract virgin materials- very

often an energy intensive process. The reduction in virgin material extraction would, in turn, also have a positive impact on air and water quality.

50. These environmental benefits are difficult to monetise due to insufficient information about the location and nature of the specific virgin material production.

51. Other benefits of high quality recyclate include improving the resilience of the waste management industry to fluctuations in demand; during the downturn in 2008, the market for high quality material experienced less price volatility. It can also improve public confidence and participation in recycling and so help Scotland achieve its 2025 70% recycling target.

52. SEPA will benefit from information on material quality and an improved understanding of MRF capabilities. It will inform SEPA's work to address quality in the supply chain with producers, collectors, MRF operations, and exporters.

53. The robust and accurate information derived from material testing will assist Scotland in proving compliance with Article 11 of the rWFD and thereby avoid potential infraction proceedings being initiated.

## **Costs**

### **MRF operators**

54. Estimated costs are based on there being 26 in-scope MRFs in Scotland.

### **Implementation/Set-up costs:**

55. It was estimated that the overall one-off cost to Scottish MRFs for implementing a material quality sampling system for inputs and outputs would be approximately £260,000 (Source: Oakdene Hollins).

56. This results in a theoretical average one off additional cost for a MRF operator of approximately £12,000. However, many Scottish MRFs already undertake material testing and therefore have some of the required equipment / management practices in place. Accordingly, the costs to these operators would be expected to be less. In August 2013, a number of interviews conducted with the operators of sorting facilities confirmed that £12K was generally accepted to be a realistic estimate for the introduction of a testing regime (costs would cover the purchase of weigh scales, sorting tables, bins/boxes etc).

### **Sampling & Reporting costs:**

57. The MRF operators interviewed suggested it would take one person approximately one hour to sort and test a 50kg sample, including the completion of paperwork to record the results etc. Operators suggested that the cost of sampling would be anything from £12.21 per hour to around £17.50. Clearly, the annual cost to MRF operators of testing and reporting will

be determined by input material quality, sample sizes and the frequency of testing undertaken at individual MRFs.

### **Local authorities and householders**

58. It is not possible to monetise the potential impact of better feedback of information to the start of the recycling chain i.e. local authorities and householders. It is expected however that more robust and accurate information would lead to higher quality inputs into MRFs as transparent reporting of input quality levels would provide local authorities with the information they need to roll-out targeted remedial action.

59. Given that the operators of sorting facilities will in future have access to improved data on input quality there is the potential that some councils may face increased gate fees. This scenario is only likely to arise however where a council consistently supplies the MRF with poor quality material and takes no remedial action to improve matters.

60. Conversely, greater availability of information on outputs could potentially result in revenue sharing contracts between local authorities and MRF operators which will then help provide greater incentives to improve both the quality of collected waste for input material and the efficiency of MRF operations.

### **Reprocessors**

61. It is assumed that improvements in operational efficiency at reprocessors as a result of receiving better feedstock may lead to higher prices being paid (to the operators of sorting facilities) where consistent, higher quality materials are delivered.

62. It is also possible that there are wider benefits to reprocessors such as reduced front end costs but monetising these is not straight forward. Access to high quality materials from home markets should reduce dependence on imported materials. This could deliver wider environmental benefits and help further growth in the UK materials collection, sorting and reprocessing sectors. Reprocessors have often commented that the lack of availability of high quality feedstock has been a barrier to investment in the sector.

### **Regulator (SEPA)**

63. In order to implement the MRF Code of Practice effectively, SEPA will be required to develop and maintain a capacity to audit, verify and report data on material quality. SEPA will be required to inspect MRFs to ensure that the Code of Practice is fully implemented in a consistent manner. SEPA will operate a programme of verification audits in order to check sampling is of a high standard thereby increasing confidence in the data. SEPA will also invest in new data reporting, analysis and dissemination tools to get regular information from MRFs to those with an interest in it in a timely manner. While

existing systems will be used where possible, these represent new regulatory duties for SEPA.

### Costs to SEPA

64. The annual costs set out in the table below are based on there being 26 MRFs in scope, with each site making four returns to SEPA annually and receiving 2 annual audits to assess compliance with material sampling and reporting requirements.

Task	Estimated annual cost
Data receipt and handling including basic data verification.	£46,592
Site auditing, including material sampling, on-site data assessment etc.	£163,072
<b>Total</b>	<b>£209,664</b>

65. It is expected that the costs of appropriate elements of these functions would be recovered by SEPA through charges to operators. Further information on SEPA's current charging schemes is available at: [http://www.sepa.org.uk/about\\_us/charging\\_schemes.aspx](http://www.sepa.org.uk/about_us/charging_schemes.aspx)

***OPTION 3 – The introduction of mandatory sampling of MRF inputs and outputs with transparent reporting of test results. To be supported by introduction of a statutory benchmark standard and a voluntary materials grading system.***

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### **Benefits**

66. Same as option 2. As stated above, whilst option 2 will provide robust and detailed information on MRF material quality, there is still a risk that some facilities may continue to produce low quality, low value materials. This has the potential to undermine efforts to ensure that MRF outputs are of a comparable standard to separately collected materials.

67. To overcome this potential issue, the introduction of a statutory benchmark standard for dry recyclate that has been separately collected would provide certainty as to what constitutes the maximum contamination level for each of the key material streams. Such an approach should provide reprocessors with increased confidence in the quality of outputs from MRFs which may, in turn, encourage higher prices being paid for consistently higher quality recyclate.

68. The introduction of a mandatory benchmark standard should allow everyone involved in collecting and sorting these materials to demonstrate

that their systems provide a similar level of quality to that achieved through separate kerbside sort, and go some considerable way towards ensuring that low grade materials are not produced.

69. Where there is a reasonable percentage differential between the EU End of Waste criteria level and the benchmark standard, for each of the main material types, then the provision of gradings between these points will provide clear guidelines leading to a transparent pricing structure where, one would assume, higher quality material commands a higher selling price subject of course to prevailing market conditions.

70. In other words, create a transparent and level playing field for all involved in dealing with recycle.

### **Costs**

71. The costs associated with option 3 are anticipated to be broadly similar to those for option 2, with any increase in costs to both the industry and SEPA linked to new testing and reporting requirements.

### **MRF operators**

72. Estimates are based on there being 26 in-scope MRFs in Scotland.

### **Implementation/Set-up costs**

73. It is estimated that the overall one-off cost to Scottish MRFs for implementing a material quality sampling system for inputs and outputs along with an enforced benchmark standard and a voluntary grading system would be approximately £280,000. (Source: Oakdene Hollins).

74. This would result in a theoretical average one-off additional cost for a MRF operator of approximately £12,800. However, many Scottish MRFs already undertake material testing and already have some of the required equipment / management practices in place. Accordingly, the costs to such operators would be expected to be less. In August 2013, a number of interviews conducted with the operators of sorting facilities confirmed that £12,000 was generally accepted to be a realistic estimate for the introduction of a testing regime (costs would cover the purchase of weigh scales, sorting tables, bins/boxes etc).

### **Sampling & Reporting costs**

75. The MRF operators interviewed suggested it would take one person approximately one hour to sort and test a 50kg sample, including the completion of paperwork to record the results etc. Operators suggested that the cost of sampling would be anything from £12.21 per hour to around £17.50. Clearly, the annual cost to MRF operators of testing and reporting will be determined by input material quality, sample sizes and the frequency of testing undertaken at individual MRFs.

## **Local authorities and householders**

76. It is not possible to monetise the potential impact of better feedback of information to the start of the recycling chain i.e. local authorities and householders. It is expected however that more robust and accurate information would lead to higher quality inputs into MRFs as transparent reporting of input quality levels would provide local authorities with the information they need to roll-out targeted remedial action.

77. Given that the operators of sorting facilities will in future have access to improved data on input quality there is the potential that some councils may face increased gate fees. This scenario is only likely to arise however where a council consistently supplies the MRF with poor quality material and takes no remedial action to improve matters.

78. Conversely, greater availability of information on outputs could potentially result in revenue sharing contracts between local authorities and MRF operators which will then help provide greater incentives to improve both the quality of collected waste for input material and the efficiency of MRF operations.

## **Reprocessors**

79. It is assumed that improvements in operational efficiency at reprocessors as a result of receiving better feedstock may lead to higher prices being paid (to the operators of sorting facilities) for higher quality materials.

80. It is also possible that there are wider benefits to reprocessors such as reduced front end costs but monetising these is not straight forward. Access to high quality materials from home markets should reduce dependence on imported materials. This could deliver wider environmental benefits and help further growth in the UK materials collection, sorting and reprocessing sectors. Reprocessors have often commented that the lack of availability of high quality feedstock has been a barrier to investment in the sector.

## **Regulators**

81. In order to implement the MRF Code of Practice effectively, SEPA will be required to develop and maintain a capacity to audit, verify and report data on material quality. SEPA will be required to licence and inspect MRFs to ensure that the Code of Practice is fully implemented in a consistent manner. SEPA will operate a programme of verification audits in order to check sampling is of a high standard thereby increasing confidence in the data. SEPA will also invest in new data reporting, analysis and dissemination tools to get regular information from MRFs to those with an interest in it in a timely manner. While existing systems will be used where possible, these represent new regulatory duties for SEPA.

## Costs to SEPA

82. The annual costs set out in the table below are based on there being 26 MRFs in scope, with each site making four returns to SEPA annually and receiving 2 annual audits to assess compliance with material sampling and reporting requirements.

<b>Task</b>	<b>Estimated annual Cost</b>
Data receipt and handling including basic data verification.	£46,592
Site auditing, including material sampling, on-site data assessment etc.	£163,072
<b>Total</b>	<b>£209,664</b>

83. It is expected that the costs of appropriate elements of these functions would be recovered by SEPA through charges to operators. Further information on SEPA's current charging schemes is available at: [http://www.sepa.org.uk/about\\_us/charging\\_schemes.aspx](http://www.sepa.org.uk/about_us/charging_schemes.aspx)

## *SCOTTISH FIRMS IMPACT TEST*

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### *Sectors and Groups affected*

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84. The proposals we seek to introduce will, in the main, impact on the operators of Material Recovery Facilities as they will need to adopt and implement the proposed quality testing regime and make the test results available to SEPA. There are however some implications for the wider waste sector also. For example, with access to improved data on material quality, Local Authorities would have ready access to the information necessary to take targeted action to address issues around contamination arising from certain household / commercial collection routes etc. Having access to quality test data should also ensure that reprocessors will be in a position to make informed choices around the purchase of particular material streams for further processing.

85. In the main, these proposals target and directly affect only one specific area of the Scottish business community, the Scottish recycling sector. The Scottish Government engaged in discussion with representatives of the waste management sector i.e. SESA and the Resource Association on the development of the proposals prior to consultation. It was clear from those early discussions that there was general agreement with the principle of mandating sampling and testing and making the information transparent. The view of the Resource Association in particular was that the current lack of transparent information was a market failure.

86. The proposals to measure quality and lower recyclate contamination levels should have a positive impact on the industry by creating a level playing field. The mandatory Code of Practice for testing and reporting of materials moving through sorting facilities and the establishment of a benchmark quality standard against separately collected materials would align all businesses to the same protocols, thereby encouraging competition and investment.

87. There is a wide variation in quality within the recyclate market which can have a detrimental effect on prices. The proposed mandatory testing and reporting regime for MRF input and output quality will provide certainty for reprocessors in the standard of material they are purchasing by increasing the understanding of what constitutes “good quality” and how it is measured.

88. Previous attempts to maintain quality standards have not been successful, mainly due to them being conducted on a voluntary basis. Industry representatives have clearly stated that a mandatory testing and reporting regime will be necessary if it's to be successful.

89. Information on quality can also support informed contracting decisions between MRF operators and their customers and help focus action to reduce recyclate contamination.

90. As part of our sector engagement, Zero Waste Scotland were asked to undertake a number of interviews with the operators of MRFs. These interviews took place between 22 August and 27 August 2013. A total of 6 interviews took place. The operators interviewed requested that their responses not be made public. Key themes that arose from the interviews however were:

- The majority interviewed agreed that Government intervention on the issue of material quality was probably necessary and justified. One operator had some reservations however due to the fact that MRFs have limited control over incoming material quality. This however is something that could be addressed through better contracting arrangements.
- The views of interviewees on the 1000 tonne cut-off for facilities in scope drew a mixed response. Half thought it was fair enough, whilst others took the view that it should apply to all MRFs.
- On the scope of testing within facilities all operators agreed that inputs needed to be tested as that is where most problems arise. There was no consensus on the testing of sorted outputs as this is determined to a great extent on input quality. All MRFs thought that extending testing to residual waste would be an inconvenience.
- On the proposal to require test results to be provided to SEPA and for those results to be published, the majority of operators welcomed this, particularly for input material. One operator commented however that

the generation of a league table may drive undesirable behaviour amongst some operators in order to ensure that they are not, so to speak, seen to be at the bottom of the league.

- On costs to implement a testing and reporting system most of the operators interviewed, particularly those with systems already in place, agreed that £12,000 was a reasonable estimate.
- There was a strong preference amongst operators for Zero Waste Scotland to provide assistance with the design and implementation of testing systems to ensure a standardisation of practice across all MRFs. It should be noted that ZWS have actively considered how best to support MRFs in this respect and that Technical Guidance will be issued to all operators to help them plan and put in place compliant testing and reporting regime. SEPA will also be engaging with MRF operators to ensure that systems are fit for purpose.

### **Competition Assessment**

91. If adopted, the proposed actions would apply equitably to all MRF operators in Scotland processing over 1000 tonnes of mixed materials per year. We do not therefore anticipate any operator being unfairly disadvantaged by these measures. Through Zero Waste Scotland all MRF operators will have access to advice, training and funding support to enable them to meet any new obligations.

92. This assessment has been discussed with the Office of Fair Trading who have agreed with this view.

### ***LEGAL AID IMPACT TEST***

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93. The proposals would not create any new offences or sanctions. It is therefore very unlikely that they will result in increased legal aid expenditure.

94. This assessment has been discussed with the Scottish Government Access to Justice Team who have agreed with our view.

### ***ENFORCEMENT, SANCTIONS AND MONITORING***

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95. The new testing and reporting requirements will be implemented through a statutory Code of Practice with compliance with the Code becoming a condition of holding a Waste Management Licence and/or PPC Permit.

96. SEPA's Compliance Assessment Scheme would take compliance with the sampling requirements into account and assessments will be presented alongside the reported information to give a full picture of compliance to customers.

97. SEPA will ensure, through enhanced existing regulatory inspections, that sampling is being undertaken in line with the requirements of the Code and that reporting is both up to standard and up to date.

98. SEPA will carry out verification sampling of material outputs in order to validate the operators reported results.

99. SEPA will use the information provided to target regulatory effort on those MRFs and collections systems which are producing the lowest quality material. This would be complemented by the provision of support from Zero Waste Scotland to address operational issues identified by the regulator.

## ***SUPPORT***

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### ***Support for MRF Operators***

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100. ZWS will work with MRF Operators across Scotland to assist them with the design and implementation of suitable systems that will enable them to establish quality measurement and control systems for assessing the quality of input and output materials at MRFs.

101. ZWS will, in discussion with the industry, also help develop a suite of actions to enable MRF operators to take action as required to achieve the highest standard of materials separation and to ensure materials meet the needs of reprocessors in Scotland and the UK as a whole and can consistently access high value closed loop markets whenever possible.

### ***Support for waste collectors***

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#### **Local authorities**

102. ZWS has published a Kerbside Good Practice Guide for local authorities to assist them in designing and delivering collection services that not only meet the needs of householders but deliver high quality materials that meet the mandatory benchmark standards. This will ensure the delivery of high quality materials to sorting facilities or waste transfer stations.

#### **Commercial waste service providers**

103. ZWS will work with commercial waste service providers (including local authorities where they are providing such a service), to provide comprehensive support thus enabling these service providers to take the necessary actions to provide separate collection services to businesses of all sizes that will result in the capture of high quality materials in order to meet the needs of the reprocessing sectors and to access closed loop markets whenever possible.

## ***IMPLEMENTATION***

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104. To implement these new testing and reporting requirements we are amending the Waste Management Licensing (Scotland) Regulations 2011 (“the WML Regs”) and the Pollution Prevention and Control (Scotland) Regulations 2012 (“the PPC Regs”) to make compliance with a new statutory MRF Code of Practice a condition of holding a waste management licence or PPC permit.

105. The MRF Code of Practice (the Code) will set out what is required in terms of material sampling and reporting. Technical Guidance has been prepared in order to provide MRF operators with a fuller understanding the Code’s requirements and to advise on matters such as staff training and how to implement a fit-for-purpose testing regime. The new sampling and reporting requirements will apply 1 October 2015.

106. As discussed above, the Code would require the operators of MRFs to routinely sample both incoming material (inputs – mixed and separately collected) and sorted outputs and electronically submit the results of this sampling to SEPA every three months in a format prescribed by SEPA. The reporting periods are:

- 1st April to 30th June with reports to SEPA due by 31st July.
- 1st July to 30th September with reports to SEPA due by 31st October.
- 1st October to 31st December with reports to SEPA due by 31st January.
- 1st January to 31st March with reports to SEPA due by 30th April.

107. SEPA will ensure, as part of regulatory inspections, that sampling is being properly undertaken and that recording and reporting of data is up to date.

## ***POST IMPLEMENTATION REVIEW***

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108. The effectiveness and impact of the measures being introduced will be subject to continual monitoring and assessment. SEPA will be undertaking audits at each MRF and the information obtained will be used not only to determine if MRFs are reporting realistic test results, but also to better understand MRF processes and improve the management of upstream and downstream quality and to map out and show trends in material quality.

109. If effective, the measures being introduced should start to drive up the quality of the materials that are flowing in to and out of MRFs. The consequence of this is that we expect to see more reprocessors sourcing materials from Scottish based facilities rather than having to source from elsewhere in the UK or from overseas markets. Zero Waste Scotland will therefore also be monitoring market trends, material flows and material prices in order to determine if the desired market outcomes are being realised.

## ***SUMMARY AND RECOMMENDATION***

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110. After careful consideration the Scottish Government recommends the adoption of option 2, i.e. the introduction of mandatory testing of MRF inputs and outputs with reporting of test results to SEPA on a quarterly basis.

111. We recommend this option on the basis that there is little support at present for the introduction of a voluntary materials grading system from either the waste management or reprocessing sectors.

### ***DECLARATION***

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112. I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

**Richard Lochhead MSP, Cabinet Secretary for Rural Affairs, Food and the Environment**