

Draft Regulations laid before Parliament and Senedd Cymru under section 2(8) and (9)(d) of the Pollution Prevention and Control Act 1999, for approval by resolution of each House of Parliament and Senedd Cymru

DRAFT STATUTORY INSTRUMENTS

2023 No. 0000

**ENVIRONMENTAL PROTECTION,
ENGLAND AND WALES**

**The Environmental Permitting (England
and Wales) (Amendment) Regulations 2023**

Made - - - - *****
Coming into force - - *1st October 2024*

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make these Regulations in exercise of the powers conferred by section 2(1), (2) and (3) of, and paragraphs 2, 6, 11 and 20(1)(b) of Schedule 1 to, the Pollution Prevention and Control Act 1999 (“the Act”)(1).

The Secretary of State and the Welsh Ministers have, in accordance with section 2(4) of the Act(2), consulted—

- (a) the Environment Agency,
- (b) the Natural Resources Body for Wales,
- (c) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses as they consider appropriate, and
- (d) such other bodies or persons as they consider appropriate.

In accordance with section 2(8) and (9)(d) of the Act, a draft of these Regulations has been approved by a resolution of each House of Parliament and by Senedd Cymru(3).

(1) 1999 c. 24. Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, by the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958), article 3(1). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(2) Section 2(4) was amended by S.I. 2013/755 (W. 90).

(3) The reference in section 2(8) to approval by each House of Parliament has effect in relation to exercise of functions by the Welsh Ministers as if it were a reference to approval by Senedd Cymru by virtue of section 150A(2) of, and paragraph 33 of Schedule 11 to, the Government of Wales Act 2006.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2023.

- (2) These Regulations come into force on 1st October 2024.
- (3) These Regulations extend to England and Wales.

Amendment of the Environmental Permitting (England and Wales) Regulations 2016

2.—(1) Part 2 of Schedule 9 to the Environmental Permitting (England and Wales) Regulations 2016(4) (materials facilities) is amended as follows.

- (2) Omit “mixed” in each place it occurs (except where inserted by this regulation).
- (3) In paragraph 1(2) (assessment and notification), after “the regulator” insert “in writing”.
- (4) In paragraph 2(1) (interpretation)—
 - (a) in the first line, substitute “Part” for “Schedule”;
 - (b) before the definition of “material particles” insert—
 - ““drink” means—
 - (a) water suitable for human consumption,
 - (b) a beverage suitable for human consumption,
 - (c) a sports drink suitable for human consumption, or
 - (d) a liquid which constitutes a beverage or sports drink suitable for human consumption if it is—
 - (i) diluted,
 - (ii) combined with crushed ice, or processed so as to create crushed ice,
 - (iii) combined with carbon dioxide, or
 - (iv) prepared by way of a process that involves any combination of the processes mentioned in paragraphs (i) to (iii) and includes, for example, fruit squash or fruit cordial;
 - “drink container” means a bottle or can in which a drink is supplied and which—
 - (a) is made wholly or mainly from polyethylene terephthalate (PET) plastic, steel or aluminium,
 - (b) has a capacity of at least 50 millilitres but no more than three litres of liquid,
 - (c) when it is filled for supply, is securely closed, and
 - (d) is designed to be used only once, or for a short period of time, before being discarded,
 - together with any label applied to it and its lid or other closures;
 - “fibre-based composite material” means packaging material which is made of paperboard or paper fibres, laminated with plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand;”;
- (c) in the definition of “materials facility”, for the words from “in order to” to the end substitute—
 - “in order to—

(4) S.I. 2016/1154, amended by S.I. 2017/1012, 1075, 2018/110, 428, 575, 721 (W 140), 2019/39 (as amended by 2019/559 and 1078, 2020/1540), 620, 2020/904, 1540, 2021/77, 2022/500, 2023/149.

- (a) separate it into specified output material, or
- (b) consolidate it into bulk quantities (whether as a first point of consolidation for such waste or following the first consolidation of bulk quantities transferred from other suppliers),

for the purpose of selling it, or transferring it to other facilities or persons to enable that material to be prepared for re-use or recycling;”;

- (d) omit the definition of “mixed waste material”;

- (e) for the definition of “paper” substitute—

““packaging” means all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer, including non-returnable items used for the same purposes, but only where the products are—

- (a) primary packaging, which is packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;
- (b) secondary packaging, which is packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is supplied as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting the product’s characteristics;
- (c) tertiary packaging, which is packaging conceived so as to facilitate handling and transport of a number of sales units or secondary packaging in order to prevent damage from physical handling and transport damage and for these purposes tertiary packaging does not include road, rail, ship and air containers;
- (d) shipment packaging, which is packaging in addition to primary packaging on items which are sold online or by mail order which are either delivered direct to the purchaser or collected by the purchaser from a shop or other collection point after they have been purchased;”;

- (f) in the definition of “specified output material”, for paragraph (b) substitute—

“(b) made up of one or more of the following kinds of material—

- (i) glass;
- (ii) metal;
- (iii) paper;
- (iv) card;
- (v) plastic;
- (vi) fibre-based composite material;”;

- (g) after the definition of “specified output material” insert—

““sports drink” means a drink which is advertised or marketed as a product to enhance physical performance, accelerate recovery after exercise or build bulk, or other similar drink;”;

- (h) in the definition of “target material”—

- (i) for “a material”, substitute “material (whether of one kind or more)”;;
- (ii) after “destined” insert “(whether by that facility or by other facilities or persons)”;;
- (iii) after “waste material” insert “or consolidated”;

- (i) after the definition of “target material” insert—
- “waste material” means waste that—
- (a) is household waste, or originates from a source other than household waste but is similar to household waste in terms of its nature or composition,
 - (b) has been separately collected (whether as a single kind of material or two or more kinds of material mixed together) for the primary purpose of preparing it for re-use or recycling, and
 - (c) consists (whether wholly or in part) of any of the following kinds of material—
 - (i) glass;
 - (ii) metal;
 - (iii) paper;
 - (iv) card;
 - (v) plastic;
 - (vi) fibre-based composite material;”.
- (5) In paragraph 2(2)—
- (a) in the first line, for “Schedule” substitute “Part”;
 - (b) for paragraph (a) substitute—
 - “(a) any reference to a “materials facility” excludes a facility or part of a facility—
 - (i) at which all the waste material received during a reporting period is attributable exclusively to a single supplier, unless the waste material so received is separated into specified output material at that facility;
 - (ii) that is provided pursuant to arrangements made under section 51(1)(b) of the 1990 Act by an authority that is a waste disposal authority within the meaning of section 30(2) of that Act⁽⁵⁾;
 - (iii) that undertakes the processing or sorting of WEEE, waste batteries or accumulators;”;
 - (c) in paragraph (b), before “recycled” insert “recycling,”.
- (6) After paragraph 2(2) insert—
- “(3) For the purposes of this Part, in relation to a batch of waste material received at a materials facility—
- (a) where that batch comprises material collected pursuant to arrangements made under section 45(1)(a) or (b) of the 1990 Act by an authority that is a waste collection authority within the meaning of section 30(3) of that Act⁽⁶⁾, that authority is the supplier, except in a case falling within paragraph (b);
 - (b) where that batch has been transferred from another materials facility, the operator of the materials facility from which that material was transferred is the supplier;
 - (c) in a case not falling within paragraph (a) or (b), the person who collected the material or, if that person is not known, the person responsible for delivering it to the materials facility is the supplier.”.
- (7) In paragraph 4 (input material)—
- (a) for sub-paragraph (2) substitute—

⁽⁵⁾ Section 30(2)(f) was substituted by paragraph 17(2) of Schedule 9 to the Local Government (Wales) Act 1994 (c. 19).

⁽⁶⁾ Section 30(3) was amended by paragraph 17(3) of Schedule 9 to the Local Government (Wales) Act 1994. There are other amendments but none is relevant.

- “(2) The operator of a materials facility must take samples of the waste material received at that facility, from each supplier, during each reporting period, except where that material is identified and kept apart as material which is to be transferred by the operator to another materials facility or person for the purpose of enabling it to be prepared for re-use or recycling, and measure the composition of those samples.”;
- (b) in sub-paragraph (3), for “125” substitute “75”;
- (c) in sub-paragraph (5)—
- (i) after paragraph (a) (and before “and”) insert—
- “(aa) subject to sub-paragraph (6A), the type of packaging that is contained in each type of target material, non-target material and non-recyclable material identified in that sample, including by reference to drink containers as a type of packaging, ”;
- (ii) in paragraph (b), after “non-recyclable material” insert “and each type of packaging”;
- (d) in sub-paragraph (6)—
- (i) in the words before paragraph (a)—
- (aa) for “Target” substitute “The”;
- (bb) omit “materials”;
- (ii) for paragraphs (a) to (d) substitute—
- “(a) glass;
- (b) aluminium;
- (c) steel;
- (d) paper;
- (e) card;
- (f) plastic bottles;
- (g) plastic pots, tubs and trays;
- (h) film or other flexible plastic;
- (i) other plastic (not falling within paragraphs (f) to (h));
- (j) fibre-based composite material;”;
- (e) after sub-paragraph (6), insert—
- “(6A) Any glass that is identified in a sample taken for the purposes of sub-paragraph (2) must be separately identified and weighed as a type of packaging in accordance with sub-paragraph (5)(aa) only where the operator is given written notice by the regulator of the requirement to do so, and any such notice—
- (a) must be given at least four weeks prior to the commencement of the reporting period in respect of which the measurements are to be taken, and
- (b) must specify the minimum number of samples for each supplier in respect of which the measurements are required.”;
- (f) in sub-paragraph (7), for “target materials, non-target materials and non-recyclable materials” substitute “the types of target materials, non-target materials, non-recyclable materials and packaging (including glass packaging where notice has been given under paragraph (6A))”;
- (g) for sub-paragraph (8) substitute—

“(8) For the purposes of this paragraph, where a batch of waste material received at a materials facility comprises material from more than one supplier, and the proportion of that batch attributable to a particular supplier cannot reasonably be ascertained, an estimate of the proportion is sufficient.

(9) The operator of a materials facility must ensure that the composition of each sample taken for the purposes of this paragraph is representative of the materials comprising the waste material from which it is taken.”.

(8) In paragraph 5 (output material)—

(a) for sub-paragraph (2) substitute—

“(2) The operator of a materials facility must measure the total weight in tonnes of all waste material that leaves the facility in each reporting period that has been identified and kept apart as material to be transferred by the operator to another materials facility or person for the purpose of enabling that material to be prepared for re-use or recycling.”;

(b) in sub-paragraph (5), for “metal, paper or plastic” substitute “paper, card, aluminium, steel, plastic or fibre-based composite”;

(c) in sub-paragraph (6)—

(i) after paragraph (a) (and before “and”) insert—

“(aa) subject to sub-paragraph (6A), the type of packaging that is contained in each type of target material, non-target material and non-recyclable material identified in that sample, including by reference to drink containers as a type of packaging.”;

(ii) in paragraph (b), after “non-recyclable material” insert “and each type of packaging”;

(d) after sub-paragraph (6), insert—

“(6A) Any glass that is identified in measuring the composition of a sample for the purpose of sub-paragraph (4) must be separately identified and weighed as a type of packaging in accordance with sub-paragraph (6)(aa) only where the operator is given written notice by the regulator of the requirement to do so, and any such notice—

(a) must be given at least four weeks prior to the commencement of the reporting period in respect of which the measurements are to be taken, and

(b) must specify the minimum number of samples for each supplier in respect of which the measurements are required.”;

(e) in sub-paragraph (7)—

(i) insert at the beginning “Subject to sub-paragraph (7A)”;

(ii) omit “target” in both places it occurs;

(iii) after the row relating to paper in the table, insert—

“Card	60 tonnes”
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(iv) in the row relating to metal in the table, after “Metal” insert “(comprising aluminium, steel or both)”;

(v) after the row relating to plastic in the table, insert—

“Fibre-based composite material	60 tonnes”
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(f) after sub-paragraph (7), insert—

“(7A) Where a sample contains more than one type of material, the applicable minimum frequency is to be determined by reference to the lowest figure in the second column of the table that is specified in relation to a material contained in the sample.”;

(g) for sub-paragraph (8) substitute—

“(8) The minimum weight of any sample taken for the purposes of sub-paragraph (4) is—

- (a) 10kg in relation to glass,
- (b) 50kg in relation to paper,
- (c) 50kg in relation to card,
- (d) 10kg in relation to metal (comprising aluminium, steel or both),
- (e) 20kg in relation to plastic, and
- (f) 50kg in relation to fibre-based composite material,

and for these purposes any sample that contains more than one type of material is to be treated as though it comprised only the material to which the lowest sampling frequency applies as determined under sub-paragraph (7A).”;

(h) in sub-paragraph (10), for “target materials, non-target materials and non-recyclable materials” substitute “the types of target materials, non-target materials, non-recyclable materials and packaging (including glass packaging where notice has been given under sub-paragraph (6A))”;

(i) after sub-paragraph (10), insert—

“(11) The operator of a materials facility must ensure that the composition of each sample taken for the purposes of this paragraph is representative of the materials comprising the batch of specified output material from which it is taken.”.

(9) In paragraph 6(1) (records)—

(a) at the end of the opening line, insert “obtained for the purposes of paragraphs 4 and 5”;

(b) at the end of paragraph (a), insert—

“and, for each batch of material of which the total weight is comprised—

- (i) the date the batch was received, and
- (ii) the name and address of the supplier (or of each supplier) for the batch concerned”;

(c) for paragraph (b) substitute—

“(b) details of all the samples and measurements taken for the purposes of paragraph 4(2) including the weight in kilograms of each sample and its composition and the date the sample was taken;”;

(d) after paragraph (b), insert—

“(ba) details of the methodology used in each case to ensure that the composition of the sample is representative for the purposes of paragraph 4(9);”;

(e) in each of paragraphs (c), (d) and (e), at the end insert “and of the date it is sent”;

(f) for paragraph (f) substitute—

“(f) details of all the samples and measurements taken for the purposes of paragraph 5(4) including the weight in kilograms of each sample and its composition, the date the sample was taken and any other details identifying the batch of specified output material from which it was taken;”;

(g) in paragraph (g)—

- (i) for “metal” substitute “aluminium, steel”;
- (ii) after “paper” insert “, card”;
- (iii) omit “target”;
- (h) after paragraph (g), insert—
 - “(h) details of the methodology used in each case to ensure that the composition of the sample is representative for the purposes of paragraph 5(11);”.
- (10) In paragraph 6(2)—
 - (a) in paragraph (a), after “first recorded” insert “in the case of information recorded before 1st October 2024 and for a minimum of 7 years from the date that it is first recorded in the case of information recorded on or after 1st October 2024”;
 - (b) in paragraph (b), for “those 4 years” substitute “the period in which the information concerned is required to be retained”.
- (11) In paragraph 7 (reports to the regulator)—
 - (a) in sub-paragraph (2)(a), after “format” insert “and in the form specified by the regulator”;
 - (b) in sub-paragraph (3)—
 - (i) at the end of paragraph (a) insert “and the details for each batch of material recorded in accordance with paragraph 6(1)(a)”;
 - (ii) at the end of paragraph (c) insert “and the details for those samples as recorded in accordance with paragraph 6(1)(b)”;
 - (iii) omit paragraphs (d) to (f);
 - (c) in sub-paragraph (4)—
 - (i) in the text before paragraph (a), omit “specified output”;
 - (ii) in paragraph (a), for “in a reporting period” substitute “recorded in accordance with paragraph 6(1)(c)”;
 - (iii) in paragraph (b), for “in a reporting period” substitute “recorded in accordance with paragraph 6(1)(d)”;
 - (iv) at the end of paragraph (c) insert “and details of where the specified output material is sent recorded in accordance with paragraph 6(1)(e)”;
 - (v) at the end of paragraph (e), insert “, with the details for those samples recorded in accordance with paragraph 6(1)(f)”;
 - (vi) omit paragraphs (f) to (h).
 - (d) omit sub-paragraph (5).
- (12) After paragraph 7, insert—

“Disclosure of information by the regulator

8. The regulator may share any information obtained from the operator of a materials facility under this Part with—

- (a) a person who is appointed, by virtue of regulations made under Part 1 of Schedule 5 to the Environment Act 2021(7), as an administrator of a scheme for producer responsibility for disposal costs (“the administrator”), and
- (b) any other person who is exercising functions on that administrator’s behalf,

for the purpose of enabling the exercise of functions conferred on the administrator under those regulations.”.

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

Date

Name
Minister for Climate Change,
one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Part 2 of Schedule 9 to the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154). That Part requires operators of materials facilities to notify the regulator if they receive waste material of 1,000 tonnes or more. Operators must sample the waste entering and leaving the facility and record and report the information to the regulator.

By virtue of these amendments (and in particular the definition of “waste material” in regulation 2(4)), the type of waste material to which the threshold for notification to the regulator applies will include waste material of a single type, rather than only material of two or more kinds mixed together.

Sampling requirements are amended, both in respect of waste material received at a materials facility (regulation 2(7)) and waste material leaving that facility (regulation 2(8)), to extend the types of material that is required to be identified, including types of packaging.

Regulation 2(9) amends the arrangements for record-keeping to reflect the new sampling requirements and to require the identification of the supplier of each batch of waste material received at the materials facility. Regulation 2(11) makes corresponding amendments to the arrangements for reporting to the regulator.

The period during which records are required to be kept for information recorded after the coming into force of these Regulations is extended from four to seven years (regulation 2(10)).

Information obtained by the regulator may be shared with the administrator for a scheme for producer responsibility for disposal costs (regulation 2(12)).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. As regards Wales, the Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations in relation to Wales. A copy can be obtained from the Waste Regulation Policy Team, Department for Climate Change, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.