

<p><b>Title:</b> The Waste (England and Wales) Regulations 2011 Post Implementation Review</p> <p><b>PIR No:</b> PIR-61723</p> <p><b>Original IA/RPC No:</b> 1889</p> <p><b>Lead department or agency:</b> Department for Environment Food and Rural Affairs</p> <p><b>Other departments or agencies:</b> DLUHC</p> <p><b>Contact for enquiries:</b> Suzanne.stafford@defra.gov.uk</p>	<b>Post Implementation Review</b>
	<b>Date:</b> 14/03/2024
	<b>Type of regulation:</b> EU
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 28/03/2011
	<b>Recommendation:</b> Amend
<b>RPC Opinion:</b> Green	

### 1. What were the policy objectives of the measure? (Maximum 5 lines)

The Waste (England and Wales) Regulations 2011 ('the 2011 Regulations') transposed several aspects of the revised Waste Framework Directive (rWFD) when the UK was in the EU. A clause was inserted when the 2011 Regulations were amended in 2012 requiring a review to take place after 5 years and every 5 years thereafter. A post-implementation review (PIR) was carried out in 2017 and published in December 2018. This is the second PIR of the 2011 Regulations.

The 2011 Regulations cover a broad range of different activities. This has influenced the approach to the PIR as it required a separate review of each area. While the elements of these regulations under review transpose specific EU requirements some form part of a broader activity that has evolved over the last 5 years. For example, separate collections, waste information notes and requirements of waste carriers, brokers and dealers. In these cases, the policy has developed as part of ambitions set out in the Resources & Waste Strategy for England 2018 (R&W Strategy) and in due course will supersede the requirements in the 2011 Regulations. In these circumstances consultations and ongoing discussions with stakeholders have been used to inform recommendations. A survey was developed to inform the evidence gaps.

Some parts of the 2011 Regulations are amendments to other regulations. These are not in scope of this PIR as they are expected to be addressed in other reviews.

For the areas in scope, there are 8 key objectives:

#### 1. Waste Management Plans (WMP)

Regulations require that there is one or more Waste Management Plan (WMP) in England. The regulations set out the content that must be covered by a WMP. The purpose is to bring together, in one place, different plans and policies relating to waste management.

#### 2. Waste Prevention Programme (WPP)

Regulations require that England has a WPP. The purpose is to ensure there is a national plan to promote waste prevention activities.

#### 3. Waste Hierarchy

Regulations require businesses that import, produce, recover or dispose of waste or act as a waste carrier, broker or dealer to apply the waste hierarchy on the transfer of waste, to ensure that waste is treated in the most appropriate manner considering the environmental and health impacts of waste.

#### 4. Targets for household recycling, construction, municipal waste and landfill.

The Regulations set out that the WMP must include measures to be taken to ensure that targets for recycling of household and construction waste are met. In 2020 the reference to those targets was updated to include requirements that the WMP includes policies to be taken to meet a municipal waste recycling ambition and new landfill reduction target.

**5. Separate recycling collections**

The Regulations require separate collection of certain materials for preparation for reuse or recycling to support an increase in reuse and recycling. Exceptions apply.

**6. Waste infrastructure**

There are requirements for planning authorities to take account of the principles of self-sufficiency and proximity when exercising its planning functions to the extent that those functions relate to waste management. WMPs and WPPs are required to promote self-sufficiency and proximity principles when decisions are taken on the location of appropriate waste facilities. This is to support development of an integrated and adequate network of waste disposal installations ensuring waste is treated near to source where possible and appropriate.

**7. Carriers, Brokers, Dealers – Carrier Registration**

The Regulations require a register of carriers, brokers or dealers of waste to be established and kept up-to-date to ensure that the transport and management of waste is regulated appropriately.

**8. Waste transfer information**

The Regulations require that when non-hazardous waste is transferred, certain information about the waste be noted. This ensures that relevant information is recorded and carried forward when waste is transferred from one party to another.

Since the last PIR was published there have been two pieces of legislation that amend the 2011 Regulations. These are:

- The Waste (Miscellaneous Amendments (EU Exit) (No. 2) Regulations 2019. These regulations ensured the 2011 Regulations remained operational after EU Exit. The previous PIR had determined the 2011 Regulations should be retained.
- The Waste (Circular Economy) (Amendment) Regulations 2020. These regulations transposed some elements of the EU Circular Economy Package where they aligned with UK Government ambitions.

Many of the changes do not represent a material change to objectives. However, the changes to note are:

- Amendments to Part 2 relating to Waste Prevention Programmes and their monitoring and evaluation. Previous wording required Defra to establish qualitative or quantitative benchmarks whereas amended wording requires Defra to establish appropriate qualitative and quantitative indicators and targets.
- Amendments to Part 5 relating to separate collections adds clarification around exceptions for what is technically environmentally and economically practicable (TEEP).
- In Schedule 1 references to outdated targets are removed (the 2020 recycling target and demolition and construction waste targets) and are replaced with new goals. The new requirements are for waste management plans to include measures to reach 65% recycling of municipal waste by weight by 2035 and measures so that the amount of municipal waste landfilled is reduced to 10% or less by 2035.
- Schedule one also includes new parts, which are:
  - Part 2A: transitional arrangements for waste management plans.
  - Part 5: provides greater detail on objectives of waste prevention measures.
  - Part 6: provides examples of economic instruments that may be considered to support application of the waste hierarchy.

## **2. What evidence has informed the PIR? (Maximum 5 lines)**

The PIR has been informed by published statistics, progress reports, evaluations, consultations and a survey of key stakeholders. A list of information used is provided in Annex A.

The previous PIR was carried out in 2017 and published in 2018. Since the last PIR there have been consultations on 5 of the 8 areas covered by the Regulations as outlined below.

The Waste Management Plan and Waste Prevention Programme were consulted on in 2020 and 2021 respectively. This fulfilled statutory obligations in the Regulations to review these documents at least every 6 years.

There have been two consultations held on introducing Consistency in Recycling in England (now termed Simpler Recycling), which is one of three major waste reforms detailed in the R&W Strategy. The consultations link directly to Regulations 13 and 14 of the 2011 Regulations on separate collections.

A consultation was held on carriers, brokers and dealers. There was evidence, detailed later, that the landscape is complex and could be improved. The 2011 Regulations along with The Control of Pollution (Amendment) Act 1989 require any person or business that transports waste, buys and sells waste, or arranges the transportation, recovery, or disposal of waste in England to be registered with the Environment Agency. A consultation was launched that proposed to bring the different requirements together under a new permitting regime. This is in-line with changes suggested by stakeholders in the last PIR.

Lastly, there has been a consultation on digital waste tracking. Digital waste tracking represents a shift to an electronic form of tracking where waste is produced and where it ends up. The Environmental Protection Act 1990 requires that waste information is provided when waste is transferred. The 2011 Regulations sets out some of the required information that must be documented. Digital waste tracking will bring together different requirements under this digital service.

The consultations were open consultations and gathered evidence from a diverse range of stakeholders, including businesses, local authorities, waste management organisations as well as the wider public.

This PIR did not seek to repeat engagement with stakeholders that had occurred through consultation where it could not offer added value. Evidence was used from any recent consultations or independent reports.

A survey was developed with the support of the Social Research team to gather evidence from stakeholders on areas where research gaps were identified. Due to the wide range of different activities that the 2011 Regulations encompass, a survey was considered an appropriate and proportionate approach to gain stakeholder feedback as it allowed different questions to be tailored for the different areas as well as allowing stakeholders to select questions that were most relevant to them. It also provided both quantitative and qualitative data for analysis.

The survey was sent to 75 stakeholders including networks or associations and included a mix of public and private sector. The stakeholder list was compiled through conversations with policy leads within Defra. The questions posed in the survey focused on whether regulations

had achieved intended objectives, whether there were any unintended consequences, whether there were costs associated with different parts of the regulations and whether the regulations could be improved. After cleaning the data for duplicate and incomplete responses, 45 responses were analysed.

### **3. To what extent have the policy objectives been achieved? (Maximum 5 lines)**

Across the 8 key areas there is mixed evidence on success. A summary on each area is provided below and a review on each area is provided in supplementary pages.

#### **Waste Management Plans (WMP)**

The requirement in the Regulations is for England to have a WMP that contains policies in relation to waste management. The first Plan was published in 2013 and the second and latest Plan was published in 2021, following a review that began in 2019. This is in line with the requirement in the Regulations to review the WMP at least every six years. The purpose of the WMP is to provide an updated picture of waste management across England. It does not include new policies and there are therefore no significant business costs associated with the Plan. In the previous PIR, stakeholders commented that the WMP was not sufficiently strategic or integrated with other government policies. The revised WMP published in 2021<sup>1</sup> makes clear the links to the 25 Year Environment Plan and R&W Strategy. When surveyed as part of this PIR, all respondents reported that the WMP was useful to some degree. Elements noted as being unhelpful included that it had limited use at a local level due to the national level focus of the Plan. It was also suggested that a shorter review period would help the plan remain relevant within a fast-moving policy landscape.

Stakeholders find the WMP useful as a reference of waste management activity and it supports local authorities in their planning functions. It is recommended this part of the regulations is retained. There is an opportunity to consider comments from stakeholders as part of the next WMP review.

#### **Waste Prevention Programme (WPP)**

The 2011 Regulations require that England has a WPP. The WPP sets out actions for government and others to reduce waste. It must cover certain sectors and establish qualitative and quantitative indicators and targets. It must also be reviewed at least every 6 years. The first WPP was published in 2013. It was reviewed in 2019 and a consultation followed in 2021. The new WPP titled Maximising Resources, Minimising Waste (MRMW)<sup>2</sup>, was published in July 2023. MRMW is a document that supports the R&W Strategy 2018 but it does not directly introduce new policy and therefore no significant business costs are associated with the programme. In the last PIR,

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<sup>1</sup> [Waste Management Plan for England 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/101444/waste-management-plan-for-england-2021.pdf)

<sup>2</sup> [The waste prevention programme for England: Maximising Resources, Minimising Waste - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118444/the-waste-prevention-programme-for-england-maximising-resources-minimising-waste.pdf)

stakeholders said that the WPP needed to take more account of charity and voluntary sectors, link to wider strategies and develop social and environmental indicators. MRMW, published in July 2023, makes specific reference to charity and voluntary sectors and sets out the metrics that will be used to monitor the programme. Monitoring will also take place through the monitoring and evaluation of the R&W Strategy. All surveyed stakeholders said they found the WPP useful. Some stakeholders suggested improvements. Stakeholder comments were also gathered through consultation and were considered as part of the MRMW where appropriate.

WPPs provide an important overview of waste prevention activity, setting out current challenges and future opportunities. Stakeholders report that there is value in the WPP. It is recommended this part of the regulations is retained.

### **Waste Hierarchy**

The Regulations require businesses that import, produce, recover or dispose of waste or act as a waste carrier, broker or dealer (CBDs) of waste to apply the waste hierarchy on the transfer of waste to ensure that waste is treated in the most appropriate manner considering the environmental and health impacts of waste. This must be confirmed as part of waste information notes (information on this is covered in a separate section). The waste hierarchy must also be reinforced through WMPs and WPPs. In the previous PIR stakeholders said that more needed to be done to incentivise moving waste up the hierarchy, for example through measures such as Extended Producer Responsibility (EPR) schemes, and that there needed to be a competence requirement in relation to CBDs. Many of these comments have been addressed through other policies and regulations rather than the specific requirement in the 2011 Regulations to follow the waste hierarchy. For example, multiple EPR systems are in delivery and the CBD reforms considered introduction of competence requirements. In the recent survey most stakeholders found the waste hierarchy slightly or moderately useful. One suggested unintended consequence was that the term is so well embedded it has lost resonance. It was also suggested that the waste hierarchy needed to be updated and to capture more nuance than it currently does although it was also recognised that there is value in the hierarchy being simplistic in its message. The waste hierarchy guidance will be updated in 2024 and comments will be taken into consideration to improve its use.

The waste hierarchy is a fundamental part of supporting a move to a circular economy. The regulations retain a necessary legal reference. It is recommended to retain this part of the regulations. The feedback from stakeholders will be used to inform an update to the waste hierarchy guidance rather than a change to regulation.

### **Targets for household recycling, construction, municipal waste and landfill.**

The Regulations required WMPs to include measures to be taken to meet two targets to be reached by 2020. One target covered household recycling with a target to recycle 50% of household waste by weight. The other covered construction and demolition waste with a recycling target of 70%. The household recycling target was not achieved. The recycling target for construction and demolition waste was exceeded. The data for reporting against household recycling is generated from local authority collected and managed statistics. Local authorities present 'waste from household' and 'household waste' recycling rates along with other metrics on

how waste is disposed. This information is sourced from WasteDataFlow. UK figures for 'waste from households' are published in UK Statistics on Waste<sup>3</sup>, which was last updated in June 2023. The construction and demolition waste statistics for England are produced using a methodology developed in conjunction with industry. Data is used from permit data from the Environment Agency Waste Data Interrogator as well as data from the Mineral Products Association. Statistics are reported as part of the UK Statistics on Waste.

References to new targets were included in 2020 and require measures to be included in WMPs for the reuse or recycling of 65% municipal waste by 2035. This was done through the WMP in 2021, which references the waste reforms that will lead to reaching 65%. The requirement in the regulations has therefore been met. However, analysis is being updated to assess the impact of the waste reforms and any additional measures that may be required. The Regulations require measures to be included in WMPs to reduce waste going to landfill to 10% or less of overall municipal waste by 2035. Defra is currently developing a Municipal Solid Waste (MSW) metric. This will allow reporting against these new measures in future.

In the previous PIR stakeholders said that more needed to be done to ensure consistent collections of recycled material across the country and early communication of government intentions to develop appropriate infrastructure to see a step-change in recycling. The government has consulted on introducing Consistency in Recycling in England, now termed Simpler Recycling. The first consultation closed in May 2019 and a response provided in July 2019. However, there have been delays in publishing the latest government response and stakeholders tell us this has impacted local authority and industry ability to make decisions or invest. The government response on Simpler Recycling was published on 21 October 2023<sup>4</sup>. The Stakeholders were surveyed about the updated targets and most thought there remained value in having these targets although commented that because they are national rather than local, they do not directly incentivise change.

The references to the targets in the Regulations should be retained. However, the potential value of non-binding performance indicators is being considered to help support recycling performance across local authorities.

### **Separate recycling collections**

The Regulations require waste collectors that collect paper, metal, plastic and glass to collect these items separately where necessary for recycling. Waste does not need to be collected separately where it is not technically, environmentally or economically practicable or where the same output could be achieved if they were mixed, i.e. if co-mingled content is sorted after collection then separate collection would not be necessary.

In the previous PIR, issues raised included a need for more guidance on the exceptions, greater clarity on support from government and improved sorting at Material Recycling Facilities (MRFs).

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<sup>3</sup> [UK statistics on waste - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/uk-statistics-on-waste)

<sup>4</sup> [Government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/simpler-recycling)

In the R&W Strategy the government set out proposals for Consistency in Recycling in England (now 'Simpler Recycling'), which was part of 3 key reforms to radically change the way that we support recycling. Two consultations were held in 2019 and 2021 on the specific requirements for consistent collections across England, including which items should be collected as well as requirements for separate collections. The requirements for Simpler Recycling, as introduced through the Environment Act 2021, will ultimately supersede and improve upon the recycling requirements that form part of the 2011 Regulations.

The government response on Simpler Recycling was published on 21 October 2023<sup>5</sup>. Simpler Recycling will ensure that the same materials are consistently collected across the England. The new legislation requires local authorities and other waste collectors to collect six recyclable waste streams (glass, metal, plastic, paper and card, food waste and garden waste) separately from residual (non-recyclable) waste, and separately from each other unless there was a technical, economic or environmental exception to allow separate collection. The Secretary of State can also set exemptions in regulations from the requirement to collect recyclable waste in each of the recyclable waste streams separately in relation to two or more recyclable waste streams. Simpler Recycling represents a more ambitious policy than the 2011 Regulations and ensures a greater range of materials is collected through kerbside collections. The policy is expected to make a significant contribution to recycling rates across England, leading to an increase in recycling to 60%, according to the published data at the time of writing.

Simpler Recycling will apply to both domestic and non-domestic settings that generate household-like waste. Implementation will begin from 2025 for businesses (except micro-firms, which will be from 2027) and 2026 for households to allow for appropriate lead-in time. A full impact assessment has been produced as part of Simpler Recycling policy development.

It is recommended that this part of the Regulations is retained until new legislation is inserted into the Environmental Protection Act 1990 via commencing the relevant sections of the Environment Act 2021, which will deliver the legislation needed to deliver Simpler Recycling. Once the new requirements are implemented, requirements in the 2011 Regulations should be repealed with respect to England to avoid legal ambiguity.

## **Waste infrastructure**

Part 6 of the Regulations sets out duties for planning authorities to apply when exercising their planning functions in relation to waste management. These duties include ensuring that waste management is carried out without endangering human health and without harming the environment, and to apply the principles of self-sufficiency and proximity. Other duties relate to granting of planning permission for landfills and appropriate periodic inspections of waste disposal and recovery establishments or undertakings.

There are also requirements for WMPs and WPPs to promote the application of the self-sufficiency and proximity principles when decisions are taken on the location of appropriate

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<sup>5</sup> [Government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/simpler-recycling)

waste facilities. The purpose of these principles is to support development of an integrated and adequate network of waste disposal installations ensuring waste is treated near to source where possible and appropriate. In England, these principles are reinforced through the WMP for England as well as through National Planning Policy for Waste (NPPW). In the last PIR stakeholders said that the principles don't always make economic or commercial sense and that considerations often differ depending on type of waste.

As part of this review stakeholders were asked through the survey whether regard was given to the requirements set out in the 2011 Regulations when planning required waste infrastructure and/or determining applicable planning applications. 14 out of 17 respondents (82%) confirmed that they give regard to the requirements when carrying out planning functions. When asked whether the requirements set out in the Regulations were useful, 9 out of 12 respondents (75%) considered them to be moderately useful.

When asked what elements of the 2011 Regulations were useful, stakeholders felt that Part 6 was clearly set out and made it clear that duties fall to Planning Officers, and that it helps focus plan preparation. It was mentioned however that this part of the regulations could benefit from an update as references to EU Directives remain.

Stakeholders were also asked how effective applying the principles of self-sufficiency and proximity have been in ensuring an integrated and adequate network of waste infrastructure. 4 out of 9 respondents (44%) felt that the principles have been moderately successful and 3 out of 9 respondents (33%) felt that they have been slightly successful.

Some stakeholders noted that the Regulations encourage cross-boundary collaborations but some also thought that it led to regional imbalances in waste capacity, that it can increase the cost of land and that speculation by developers can create obstacles. It was also stated by one stakeholder that commercial reasons are the primary driver of planning decisions.

It is recommended to retain this part of the regulations as they form an important part of wider planning requirements and ensure that due regard is given to environmental principles as part of planning functions.

### **Carrier, broker and dealer registration**

Part 8 of the Regulations relating to waste carriers, brokers and dealers is made in exercise of and supports the Control of Pollution (Amendment) Act 1989. The Regulations require a register of carriers, brokers or dealers (CBDs) of waste to be established and kept up-to-date to ensure that the transport and management of waste is regulated. The 2011 Regulations specify who is captured by CBD requirements and they require that those captured confirm application of the waste hierarchy, which in England is done via waste information notes. Registrations are made with the Environment Agency who hold, and is responsible for, the register. During the last PIR stakeholders said that the platform for registration was simple to use but there was concern that the regime is difficult to track, difficult to enforce and that some CBDs were not aware of their obligations to register. The Independent Review into Serious and Organised Crime in the Waste Sector<sup>6</sup> in 2018 recommended that the CBD regime be reformed and this was accepted by the

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<sup>6</sup> [Independent Review of Serious and Organised Crime \(accessible version\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684242/Independent_Review_into_Serious_and_Organised_Crime_in_the_Waste_Sector_accessible_version.pdf)



government in the 2018 Resources and Waste Strategy. A consultation was undertaken in 2022 to modernise and improve the regime and the government response was published on 21 October 2023. The reforms will see this part of the 2011 Regulations removed (in relation to England) as CBD requirements will sit under new permitting regulations. This is a move that is welcomed by stakeholders; 73% of the respondents to the consultation agreed that the current CBD regime should be brought under environmental permitting regulations<sup>7</sup>.

It is recommended to repeal the CBD requirements for England in the legislation once new legislation is in place through the environmental permitting regulations. The proposals for a new permitting regime has received collective agreement and a government response published. The new legislation will be laid when parliamentary time allows. (Note that requirements will be retained for Wales but the territorial scope of this PIR is England only.)

### **Waste transfer information**

Waste duty of care refers to the responsibilities of importers, keepers, producers, carriers, brokers, dealers of controlled waste or those that treat controlled waste to ensure the safe management of waste. A code of practice has been produced under powers in the Environmental Protection Act 1990. Part of the code of practice refers to information that must be recorded and passed on when waste is transferred through a waste information note (WIN).

Regulation 35 of the 2011 Regulations supplement the code of practice by setting out what information should be provided in a WIN. The WIN is also the vehicle for confirming application of the waste hierarchy discussed above. As part of the last PIR there was clear support for the need for WINs although it was thought electronic notes rather than paper should be encouraged or made mandatory. Waste information and waste information notes are a small part of a wider system for managing and tracking waste. As raised during the last PIR it has been clear that the current system is not adequate for accurate waste tracking. A consultation was held in January 2022 on a new mandatory digital waste tracking service for the UK under powers in the Environment Act 2021. The Summary of Responses was published in December 2022<sup>8</sup>. This document summarised views from 702 responses received across a wide cross-section of organisations and showed that 73% of respondents agreed with the waste activities that should be recorded in the waste tracking service. It also reported that respondents broadly agreed with the information that should be recorded (agreement ranged from 63% to 85% when stakeholders were asked views on specific pieces of information to be recorded). The government response, which sets-out specific details and timelines was published on 21 October 2023<sup>9</sup>.

The move to the new system will require removal of regulation 35 of the 2011 Regulations as requirements will sit in new legislation to introduce mandatory digital waste tracking.

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<sup>7</sup> [Government response and summary of responses - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/government-response-and-summary-of-responses-to-the-2022-consultation-on-the-2011-waste-regulations)

<sup>8</sup> [Introduction of Mandatory Digital Waste Tracking \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/introduction-of-mandatory-digital-waste-tracking)

<sup>9</sup> [Government response - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/government-response-to-the-2023-consultation-on-the-2011-waste-regulations)

It is recommended that regulation 35 of the Regulations is retained until the date is confirmed for waste tracking legislation to come into force as it is important that current arrangements remain as a minimum until the new system is implemented.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed: Tom Moulard

Date: 13.03.2024

Signed: Robbie Moore MP

Date: 14.03.2024



## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions? (Maximum 5 lines)

An impact assessment was carried out in 2010 to assess costs and benefits of transposing the rWFD. Costs associated with hazardous waste have not been considered as this is out of scope for this PIR.

The costs assumed in the original impact assessment covered by this PIR were, at the upper end, £50.5m for transition and £6.08m ongoing annual costs. The mid-point level for ongoing costs was £4.6m. The 2018 PIR was not able to establish costs for many areas of the 2011 Regulations although with regards to waste hierarchy and waste carriers, brokers and dealers the PIR stated there was evidence from stakeholders that costs were not as high as anticipated. However, it should also be noted that the 2011 Regulations support various aspects of the waste regime and it is difficult to assign costs to a particular regulatory requirement. Given the estimated ongoing costs of the 2011 Regulations it was deemed disproportionate and technically very challenging to differentiate specific costs in many cases.

The assumed benefits were to reduce the adverse impacts of the generation of waste through introducing targets for recycling, ensuring materials were collected for recycling, enforcing consideration of the waste hierarchy for all carriers, brokers and dealers of waste and having plans in place to support the prevention and appropriate management of waste.

The PIR conducted in 2018 acknowledged that it is difficult to determine causal links between the 2011 Regulations and the environmental benefits given that the Regulations do not act in isolation. However, it was noted that stakeholders were generally of the view that the Regulations had supported environmental aims.

### 5. Were there any unintended consequences? (Maximum 5 lines)

Stakeholders suggested several unintended consequences to be considered. These are summarised below.

#### **Waste Management Plans (WMP)**

In the survey carried out for this PIR, stakeholders were asked whether there were any unintended consequences of the WMP, 1 out of 11 respondents (9%) said 'yes', 2 (18%) said 'no' and 8 (73%) were 'unsure'. It was suggested that the current 6-year review period could be reconsidered as the Plan can be outdated. One comment suggested that the Plan should be better aligned with changes in the National Planning Policy Framework (NPPF), the National Planning Policy for Waste (NPPW) and the Levelling-up and Regeneration Bill (LURB). One comment also noted that because of the national focus of the plan, data used are often only disaggregated to a regional level while local planning takes place at local authority level. The high proportion of stakeholders who

said they were 'unsure' is likely due to the fact that the WMP does not introduce policy but is a summary document and therefore it would be challenging to determine direct consequences.

### **Waste Prevention Programme (WPP)**

When stakeholders were asked whether there were any unintended consequences of the WPP, 2 out of 9 respondents (22%) said 'yes', 4 (44%) said 'no' and 3 (33%) were 'unsure'. It was said that the focus on weight-based metrics can mean developments that make 'carbon sense' are not necessarily prioritised. It was also noted that the lack of mandatory prevention targets can mean there are pockets of inactivity across the country.

### **Waste Hierarchy**

When stakeholders were asked through the survey whether there were any unintended consequences of the waste hierarchy, 4 out of 17 respondents (24%) said 'yes', 5 (29%) said 'no' and 8 (47%) were 'unsure'. It was suggested that there is too much focus on recycling rather than emphasising activities further up the hierarchy, such as reuse. Also, while stakeholders noted that the simplicity of the hierarchy is useful for providing a clear message, some said that the simplicity sometimes meant that nuance was lost or that it was too simplistic in some circumstances. One stakeholder said the hierarchy, while well known, had lost some resonance. Lastly, one comment suggested that it can deter needed treatment capacity in a region leading to inequity of treatment nationally.

### **Targets for household recycling, construction, municipal waste and landfill.**

When stakeholders were asked through the survey whether there were any unintended consequences of the municipal recycling ambition, 2 out of 10 respondents (20%) said 'yes', 4 (40%) said 'no' and 4 (40%) were 'unsure'. It was suggested that the targets can sometimes lead to unintended behaviours, such as focusing on recycling rather than re-use or continued use of items that are perceived as a better option but in fact are not e.g. use of paper straws rather than plastic straws when paper straws generally remain a single-use item. It was also suggested that the focus on recycling targets can lead to less focus on other activities that sit further up the waste hierarchy.

When stakeholders were asked whether there were any unintended consequences of the landfill reduction target, 1 out of 10 respondents (10%) said 'yes', 4 (40%) said 'no' and 5 (50%) were 'unsure'. One comment received suggested that fewer landfill sites means waste travelling longer distances, which goes against the proximity and self-sufficiency principles.

When stakeholders were asked whether there were any unintended consequences of the construction recovery target, 2 out of 10 respondents (20%) said 'yes', 4 (40%) said 'no' and 4 (40%) were 'unsure'. One comment suggested that it led to residual waste stream that was low value and expensive to dispose of and led to greater illegal activity.

Several stakeholders indicated they were 'unsure' in the above questions. This may be because the targets do not obviously link to a particular consequence.

## **Separate recycling collections**

Simpler Recycling policy has been developed to address the key issue that the regulations currently lead to significant differences in what is and can be recycled across England. These differences lead to confusion and can hamper recycling rates. WRAP's recycling tracker, which provides insights into household recycling behaviours highlights confusion in recycling as an important consideration. It is also apparent that the delays in confirming policy have meant that key decisions e.g. in relation to contracts or infrastructure, cannot be made in preparation for expanding recycling services until confirmation of information and funding is provided. This is reflected in comments provided from discussions with waste disposal authorities.

## **Waste infrastructure**

When stakeholders were asked through the survey whether there were any unintended consequences relating to parts of the 2011 Regulations that support waste infrastructure, 5 out of 9 respondents (56%) said 'yes', 1 (11%) said 'no' and 3 (33%) were unsure. One comment noted that there was sometimes conflict relating to the proximity and self-sufficiency principles, where waste may be better treated further afield in open areas. Two comments suggested there could be barriers or delays to delivering capacity and that land could become more costly. Another comment suggested that better alignment between different planning requirements could lead to more optimal outcomes.

## **Carrier registration**

As part of the last PIR, comments received suggested that the regime could be improved by moving to a permitting system and that the system as a whole could be exploited leading to illegal activity. The Defra policy team has been in dialogue with stakeholders, including the regulator, to develop proposals to address these issues. A consultation was also carried out. The government response<sup>10</sup>, recently published, sets out how it intends to address these.

## **Waste transfer information**

The obligations found in the 2011 Regulations around waste transfer notes and the information that must be provided by those involved in the movement or transfer of waste are one part of a wider regime. In the last PIR some of the issues raised included challenges with understanding responsibilities, particularly for smaller businesses and impracticability of enforcement due to volume of notes and the formats they come in. Waste tracking has been developed to address many of the challenges faced when tracking waste and recording the correct information. The government response that sets out the future for waste tracking was published on 21 October this year.

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<sup>10</sup> [Government response and summary of responses - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

## **6. Has the evidence identified any opportunities for reducing the burden on business?**

(Maximum 5 lines)

This PIR reports several opportunities that could better support the objectives of the regulations. Many of these opportunities relate to sections of the 2011 Regulations that fall within broader reforms and in those cases are a consequence of ongoing stakeholder engagement, independent reviews and consultations. In other areas where the regulations will be retained there are some opportunities that have been identified to improve functioning of the regulations without regulatory intervention.

### **Carriers, Brokers, Dealers and Waste Information Notes**

Changes to the carriers, brokers, dealers (CBD) regime offers an opportunity to better support legitimate waste businesses. The current regime is considered fragmented with opportunities for improvement and the requirements for businesses straddle several different regulations, which generates confusion. After public consultation it has been decided to overhaul regulations and move to an online permitting system that will ensure records can be simply created and traced. While there are business costs associated with the regulatory changes, there are benefits generated through reducing the costs to legitimate business that is associated with illegal activity. The permitting system will sit in different regulations and so will be beyond the 2011 Regulations, however, an overview of the latest impact assessment is provided in the CBD section below.

The CBD regime is connected to digital waste tracking as users will be required to upload information to demonstrate that they have an appropriate permit or have registered an exemption. Digital waste tracking represents an opportunity to provide a single, comprehensive way of tracking the amount and type of waste being produced and where it ends up. This goes beyond the elements of the 2011 Regulations that contributes to an outdated and mostly paper-based system. Together CBD reforms and digital waste tracking will support more effective waste regulation, help businesses to comply with their duties and reduce the ability for waste criminals to undercut legitimate business.

### **Separate collections**

The 2011 Regulations require certain waste streams to be collected separately unless it is not justifiable on economic, technical or environmental grounds. The new legislation requires other waste collectors to collect six recyclable waste streams (glass, metal, plastic, paper and card, food waste and garden waste) separately from residual (non-recyclable) waste, and separately from each other unless there was a technical, economic or environmental exception to allow separate collection. The Secretary of State can also set exemptions in regulations from the requirement to collect recyclable waste in each of the recyclable waste streams separately in relation to two or more recyclable waste streams. We recently consulted on proposed exemptions to allow for co-mingling all dry recycling streams and all organic recycling streams.

The consultation outcome will be announced in due course. Alongside the technical, economic and environmental exceptions, exemptions may minimise the burden on waste collectors.

## **Waste Hierarchy**

The waste hierarchy is viewed as an essential part of the circular economy. Its simplicity was noted as being valuable to help reinforce messages and setting a clear priority order. However, some stakeholders felt that the simplicity of the hierarchy means that nuances are sometimes lost. It was also felt that the waste hierarchy needs to be rejuvenated to bring it back to prominence. The feedback provided by stakeholders does not suggest that regulatory changes are required. However, the views provided will be used when updating waste hierarchy guidance, which does not require regulatory intervention. Application of the waste hierarchy is also being considered as part of a new mandatory digital waste tracking service.

### **7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)**

The laws implementing the various elements of the rWFD have not been reviewed for all MS as the legal frameworks for waste management are complex and it would be disproportionate to attempt a review of all.

However, the European Commission's implementation review report of June 2023<sup>11</sup> proposes several best practices that member states should consider for effective implementation, these include:

- Expanding capacity for separate collection of biowaste
- Targets for separate collections at municipal level
- More frequent collection of separated waste streams than mixed waste
- Utilising incineration and landfill taxes
- Ensuring waste prevention programmes are updated to better encourage more waste prevention activity.

From the reports reviewed there is no evidence that the UK has taken a particularly burdensome approach in how it has chosen to implement the various rWFD requirements and support our circular economy goals.

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<sup>11</sup> [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0304](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0304)



Department  
for Environment  
Food & Rural Affairs

# The Waste (England and Wales) Regulations 2011

Post Implementation Review

Date: September 2023



We are the Department for Environment, Food and Rural Affairs. We are responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

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# Introduction

This Post Implementation Review (PIR) covers The Waste (England and Wales) 2011 Regulations ('the 2011 Regulations'). The 2011 Regulations require a PIR to be carried out every 5 years. The last PIR was carried out in 2017 and published in 2018. This PIR fulfils the requirement to publish the next review within 5 years.

The 2011 Regulations are a complex set of regulations that implement different elements of the revised Waste Framework Directive (rWFD). These elements cover 8 main areas or objectives:

- Waste Management Plans (WMP)
- Waste Prevention Programme (WPP)
- Waste Hierarchy
- Targets for household recycling, construction, municipal waste and landfill.
- Separate recycling collections
- Waste infrastructure
- Carriers, Brokers, Dealers (Carrier registration)
- Waste transfer information

Collectively the different elements of the 2011 Regulations contribute to and support the long-term aim of reducing or minimising the adverse impacts of the generation of waste and resource use on human health and the environment.

The 2011 Regulations transposed aspects of the revised Waste Framework Directive (rWFD) and some elements of the Circular Economy Package. Since leaving the EU it is possible to deviate from requirements that were EU led. However, many elements of the 2011 Regulations reflect UK commitments to support a circular economy and so are in-keeping with UK aims.

This PIR reviews each of the areas above separately to ensure clarity and transparency.

Several of the areas listed above have become part of broader reforms over the last 5 years. The evolution of Simpler Recycling, the waste carrier, broker and dealer regime and Digital Waste Tracking are all examples of ambitious reforms set out in the Resources & Waste Strategy 2018 that will mark significant improvements to the status quo. These policies subsume and will supersede some of the requirements currently in the 2011 Regulations. In these cases, the PIR has reflected on views and evidence ascertained from independent reports, conversations with stakeholders and consultations.

Other evidence used to inform this PIR has included desk-based research, ongoing dialogue with stakeholders and a stakeholder survey. A survey was used to minimise the burden on stakeholders given the significant level of engagement that is ongoing. The survey allowed stakeholders to select the questions most relevant to them and provided both quantitative and qualitative responses for analysis.

# Waste Management Plans

## Regulatory requirements and objectives

Regulation 7 of the 2011 Regulations requires Defra to ensure there are one or more plans containing policies in relation to waste management in England (a Waste Management Plan or WMP). The purpose of the WMP is to provide an overview of waste management in England. The 2011 Regulations require that the WMPs contain certain information, including information on the current waste management situation, the type, quantity and source of waste generated, information on waste infrastructure, measures that support movement of waste up the hierarchy and set out any appropriate indicators or targets.

The Regulations also require WMPs to include a statement of the policies for achieving the objectives in relation to waste and litter, packaging waste, separate collection of waste, management of bio-waste, promoting re-use activities and attaining recycling and landfill reduction targets.

WMPs must be reviewed at least every six years.

## Original assumed costs compared with evidenced costs

The original impact assessment estimated a one-off cost to local authorities of £304,000. The anticipated benefits were an ability for waste producers to identify sites suitable for managing waste and to help understand the national picture on waste infrastructure.

In the 2018 PIR no direct business costs were determined since the WMP does not introduce policies.

As part of this PIR stakeholders were surveyed and asked about costs associated with the WMP and 3 out of 12 (25%) felt there were no costs while 8 out of 12 (75%) were unsure. These responses are not unexpected given the WMP represents a documentation of the current landscape rather than introducing policy itself.

## Evaluation of progress against regulations and objectives

The PIR published in 2018 confirmed that the Government had published its WMP for England in 2013. The 2013 WMP was reviewed in 2019, which meets the requirement to review the Plan at least every 6 years. A consultation followed in 2020 and a revised plan was published in January 2021.

The WMP published in 2021 specifically sets out the information that the 2011 Regulations require, including measures applicable up to 2020 as well as amendments introduced through the Waste (Circular Economy) (Amendment) Regulations 2020.

In the last PIR stakeholders said that the WMP was not strategic enough, needed to be better integrated with other government strategies and include a clear plan for monitoring and evaluation. The WMP published in 2021 better provides the context of the Plan and how it sits alongside the 25 Year Environment Plan and the R&W Strategy 2018. The WMP also sets out an approach to evaluation through indicators set out in the R&W Strategy, which are periodically reviewed and published.

The 2021 WMP was subject to Strategic Environment Assessment (SEA) and an Environmental Report was published alongside the Plan. The Environmental Report concluded that overall, through the policies signposted in the Plan, it will have a positive effect on the environment. This conclusion broadly reflected the socio-economic and environmental benefits associated with sustainable waste management and moving waste up the waste hierarchy. Significant positive effects were identified in respect of biodiversity, land use, geology and soils and on climatic factors. No overall significant negative effects were identified.

The SEA also considered and identified reasonable alternative, which in this case was the 'Direction of travel' alternative, which would have sought to consider the potential to move further up the waste management hierarchy for each waste. Defra chose to reject the reasonable alternative due to the preferred role of the WMP being to set out existing and planned waste management policies rather than introducing new policies or to focus on waste prevention.

For the purposes of waste planning, the WMP should be read in conjunction with the National Planning Policy for Waste (NPPW). The NPPW requires that all local planning authorities should have regard to its policies when discharging their responsibilities to the extent that they are appropriate to waste management. This means that the WMP has a clear role in supporting waste planning and waste planning authorities.

### Stakeholder views

There were 14 respondents to the survey question on usefulness of the WMP. All respondents felt the WMP was useful to some degree. Although only 3 (21%) found it 'very useful' whereas 7 (50%) found it 'moderately useful' and 4 (29%) found it only 'slightly useful'. The elements that were considered helpful, summarised from the survey, included:

- It provides a reference point showing the national picture and importantly drawing different plans together. Stakeholder reflections included that having a single reference point is extremely helpful when considering planning.
- It is a good summary of current state of waste planning and waste data.
- It is helpful in guiding local planning and supporting development of local plans as well as providing useful signals on specific areas, such as anaerobic digestion (although it was also noted that not placing anaerobic digestion specifically into the waste hierarchy was problematic).
- It provides a helpful focus on the waste hierarchy.

Stakeholders were also asked in the survey whether the usefulness of WMPs had changed over time and 8 out of 12 respondents (67%) answered that it had stayed the same.

In terms of the WMP's ability to meet the overall objective of ensuring that waste management is carried out without endangering human health or the environment it was said by one stakeholder that the Plan ensures consideration of this but this objective is fulfilled through other plans or regulations that have specific conditions e.g. permitting.

One purpose of the WMP is to support application of the waste hierarchy. 10 out of 14 stakeholders (71%) felt that the WMP slightly or moderately supported this objective but 4 (29%) thought it was not effective.

## **Unintended consequences or areas for improvement**

When stakeholders were asked whether there were any unintended consequences of the WMP, 1 out of 11 respondents (9%) said 'yes', 2 (18%) said 'no' and 8 (73%) were 'unsure'.

Several stakeholders thought the 6-year review period for the plan was too long and that it meant the WMP becomes outdated. Other unintended consequences or areas of improvement suggested by stakeholders included that the Plan does not provide sufficient direction since it only sets out existing interventions, policies and regulations, that the national nature of the Plan means it does not address geographical equitability and that waste minimisation needed to be emphasised. There was also a comment that anaerobic digestion (AD) and its role should be explored more fully in the Plan.

## **Conclusion and recommendation**

Stakeholders find the WMP useful as a reference of waste management activity and it supports local authorities in their planning activities. It is recommended this part of the regulations are retained. However, there are several areas raised by stakeholders that need to be considered. The latest WMP will be reviewed by 2027 and the comments provided by stakeholders will be used as part of that review.

# Waste Prevention Programmes

## Regulatory requirements and objectives

Part 2 and 4 of the Regulations require government to publish a Waste Prevention Programme (WPP) to support the reduction of the generation of waste, to apply the waste hierarchy, contribute to relevant targets and support the integrated and adequate network of waste disposal installations. Regulation 5 of and Part 5 of Schedule 1 to the Regulations set out what must be covered by a WPP.

In 2020 amendments were made to the regulations via the Waste (Circular Economy) (Amendment) Regulations 2020. These amendments made additional requirements to include a programme for food waste prevention measures as well as expanding the Schedule 1 list of waste prevention measures covering waste electrical and electronic equipment (WEEE), textiles, furniture, packaging and construction materials. An amendment was also included to require the establishment of appropriate qualitative and quantitative indicators and targets.

The WPP must also be reviewed at least every 6 years.

## Original assumed costs compared with evidenced costs

The impact assessment carried out on the different elements of the rWFD did not determine any cost to business of the WPP. This is because the WPP does not itself place obligations on business and so there is no specific cost associated with this although the menu of policy options referenced in the WPP will all have their own cost benefit analysis associated with them if they are implemented. It would be disproportionate and out of scope to consider all of the potential policies referenced in the WPP in light of this.

In the 2018 PIR no direct business costs were determined for reasons referenced above. Similarly, as part of this PIR no costs to businesses were determined. When surveyed, no stakeholders thought that the WPP led to additional costs; 3 out of 9 respondents (33%) said there were no costs and 6 out of 9 (67%) were unsure. This is expected given the WPP does not directly introduce policy.

## Evaluation of progress against regulations and objectives

Defra published its first WPP in 2013. An evaluation of the WPP was carried out in 2019 and published in 2020 satisfying the regulatory requirement for a review to take place every 6 years. The report found that, based on data available at the time, waste arisings between 2013 and 2017 remained at a similar level. However, waste arisings per unit of GVA had decreased. This indicates that the economy is growing faster than material consumption and waste arisings.

In 2021 an evaluation of different waste prevention measures was published by WRAP on behalf of Defra and following this evaluation a revised WPP was consulted on. There were

244 responses from different organisations and the summary of responses was published in July 2023<sup>12</sup>.

In July 2023 the revised WPP was published – The Waste Prevention Programme for England: Maximising Resources, Minimising Waste (MRMW). The MRMW reasserts plans for preventing waste arising and is a comprehensive document setting out what has been done and what the government will do. MRMW focuses on seven key sectors covering: construction, textiles, furniture, electronics, road vehicles, food and packaging, plastics and single use items. This covers the requirement in the regulations to focus particularly on certain of these areas.

In response to comments received during the last PIR and as part of the consultation, the MRMW includes a specific focus on work across public, private and voluntary sectors.

MRMW will be monitored via the R&W Strategy: Monitoring Progress report that is periodically published. However, the last publication did not include all MRMW measures as some are under development. Over time the MRMW will be monitored against the metrics it sets out as well as monitoring of the actions and commitments in The Programme. It was proposed to keep these metrics under review to ensure they remain correctly focused and useful.

#### Stakeholder views

When surveyed, 5 out of 10 (50%) respondents said that they found the WPP moderately useful. No stakeholders thought the WPP was of no use and 2 out of 10 (20%) found it 'very useful' or 'extremely useful'. Most stakeholders also said that the usefulness of the document has remained the same over time.

Through the recent consultation the key points highlighted by stakeholders include:

- Circular economy should be further embedded into policy
- Voluntary measures are not sufficient
- A focus on design is important to improve product lifecycles
- Extended Producer Responsibility (EPR) is welcomed to support change although concerns about how an EPR would work for imported products were raised
- Better data and metrics to ensure measurability

These points were addressed in the MRMW published in July.

### **Unintended consequences or areas for improvement**

When stakeholders were asked, through the survey, whether there were any unintended consequences of the WPP, 2 out of 9 respondents (22%) said 'yes', 4 (44%) said 'no' and 3 (33%) were 'unsure'.

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<sup>12</sup> [Summary of responses - GOV.UK \(www.gov.uk\)](https://www.gov.uk)



In terms of unintended consequences, one comment suggested that weight-based metrics meant some initiatives may not be pursued even though it makes sense in terms of carbon savings and one stakeholder commented that the lack of mandatory requirements to deliver waste prevention locally has led to pockets of inactivity and the split between responsibilities of waste disposal authorities and waste collection authorities sometimes means a disconnect on waste prevention efforts.

As noted above, more detailed stakeholder feedback was gathered through the recent consultation on the new WPP and the published MRMW considered points raised.

## **Conclusion and recommendation**

Evidence from stakeholders suggests that the WPP has value and can play a strategic role in supporting a circular economy. It is recognised as an important document setting out waste prevention activities. It is recommended that this part of the regulations is retained.

# Waste Hierarchy

## Regulatory requirements and objectives

Regulation 12 of the Regulations require those involved in waste management to apply the waste hierarchy on the transfer of waste. The purpose is to ensure that the waste hierarchy is being applied in all relevant sectors and organisations at the point of transfer of waste. In England, waste handlers must confirm they have applied the waste hierarchy through a declaration in waste information notes. This particular element is discussed further as part of the Waste Information Notes section.

The waste hierarchy must be covered as part of waste management plans and waste prevention programmes as set out in Schedule 1 of the Regulations.

The purpose of these requirements in the 2011 Regulations is to ensure that a priority order is implemented for the generation and treatment of waste to help protect the environment and human health.

There have not been any further changes to regulations since the last PIR.

## Original assumed costs and benefits

The original impact assessment estimated costs of £40,300 to £80,600 for businesses to read and understand guidance on the waste hierarchy. The anticipated benefits would be shifting waste up the hierarchy – it was estimated that to be cost-neutral this would need to be in order of an extra 18,000-36,000 tonnes of food waste prevented and 54-116,000 tonnes of paper/card recycled over the 10-year policy. The non-monetised benefits include reducing greenhouse gas emissions and reduced use of virgin materials.

The 2018 PIR did not ascertain any figures on costs when engaging with stakeholders.

As part of this PIR stakeholders were asked about potential costs. One stakeholder suggested a cost of £5,000 per annum in terms of incorporating waste hierarchy into planning while others suggested it was too difficult to determine an exact cost because in reality the application of the waste hierarchy impacts every strand of waste management but all of this cannot be attributed to the 2011 Regulations, rather it is a combined effect of different strategies and policies.

Through the survey carried out, 12 out of 16 respondents (75%) were either unsure of any costs or thought there were no additional costs. 4 respondents (25%) thought there was a cost but that it was impossible to determine because it is part of a broader set of costs associated with wider circular economy costs.

## Evaluation of progress against regulations and objectives

The requirements of the 2011 Regulations are met through meeting requirements to include the waste hierarchy in WMPs and WPPs. The requirement to ensure that waste importers, producers, carriers, brokers or dealers or those that recover or dispose of waste apply the waste hierarchy is fulfilled through declarations in waste information notes, which

is discussed later. Waste hierarchy guidance exists to support organisations in implementing the waste hierarchy.

Since publishing the waste hierarchy there have been specific waste hierarchies published for plastics (developed and published by WRAP December 2022<sup>13</sup>) and food and drink waste (guidance published by Defra, April 2023<sup>14</sup>). It is however recognised that guidance for the waste hierarchy should be updated and in the recently published Waste Prevention Programme: Maximising Resources Minimising Waste it was confirmed that the guidance would be updated in 2024.

In the previous PIR stakeholder said that there was little incentive for manufacturers to design products in a way that enables waste to move up the hierarchy, they suggested introducing a waste hierarchy competence in carriers, brokers, dealers registration and greater incentives for the use of secondary rather than virgin materials.

The Regulations alone do not lead to implementation of the waste hierarchy. Implementation of the waste hierarchy is practically reflected in numerous policies as well as being reinforced through different legislation, for example The Environmental Protection Act 1990, Extended Producer Responsibility regulations, Environmental Permitting regulations and The Finance Act to name a few. There are a number of new policies that are also being considered that will strengthen the move to a circular economy and moving waste further up the waste hierarchy e.g. a recent consultation of near-elimination of biodegradable waste from landfill and the suite of options put forward for consideration in MRMW.

The indicators within the recently published Environmental Improvement Plan sets out ambitions or targets for minimising waste and the R&W Strategy monitoring report last reported on in November 2022 provides an overview of key metrics. The metrics will provide a proxy for assessing success of application of the waste hierarchy in future.

#### Stakeholder views

Out of the stakeholders surveyed, 13 out of 18 (72%) thought that the Regulations were slightly or moderately useful in enforcing the waste hierarchy.

Stakeholders said that the hierarchy itself is useful to provide a clear and simple ranking of waste management that is easy to explain and in terms of the legislation the 2011 Regulations help to ensure there is legal weight behind the hierarchy and that the hierarchy is considered in planning and operational decisions.

When asked about usefulness of the waste hierarchy, 12 out of 19 respondents (63%) thought it had increased or stayed the same in usefulness, although 7 respondents (37%) thought that it had decreased in usefulness.

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<sup>13</sup> [The Plastics Waste Hierarchy | WRAP](#)

<sup>14</sup> [Food and drink waste hierarchy: deal with surplus and waste - GOV.UK \(www.gov.uk\)](#)

Examples of where it could be demonstrated that the waste hierarchy had been applied and added value were the adoption of resale sites at HWRCs, high-profile companies shifting to the use of anaerobic digestion and a change in attitudes by customers.

Other elements of the hierarchy not considered useful were the ease of departing from the hierarchy where appropriate. Although conversely other comments suggested it was not flexible enough. It was also suggested that, for some, application of the weight hierarchy is merely a tick-box requirement under Duty of Care requirements – considerations around this have been picked up as part of the consultation on waste carriers, brokers and dealers.

Suggested improvements by stakeholders were:

- presenting the hierarchy in carbon terms
- giving targets for moving up the hierarchy
- updating the hierarchy to put more emphasis on reducing waste as there is too great a focus on recycling activity
- more consideration to enforcement (but it was noted that currently the Environment Agency does not have sufficient resource to do more even if possible)
- developing a system that producers and handlers can use to demonstrate that the waste hierarchy has been adhered to
- improving enforcement
- a greater focus on reporting and/or metrics that highlight organisations that are adhering to the hierarchy
- greater incentives to repair or reuse goods.

The suggestions raised will be considered when guidance for the waste hierarchy is developed in 2024.

## **Unintended consequences**

When stakeholders were asked whether there were any unintended consequences of the waste hierarchy, 4 out of 17 respondents (24%) said 'yes', 5 (29%) said 'no' and 8 (47%) were 'unsure'.

Some stakeholders suggested that the waste hierarchy is so well known that it had lost resonance. It was suggested that it required a refresh to reinforce its importance. Another unintended consequence referenced by some stakeholders was that, while the benefit of the waste hierarchy is its simplicity, this simplicity sometimes masked complexities in the system that could result in a less waste treatment option being applied. It was suggested that reinforcing a focus on life cycle assessments is important to avoid perverse outcomes.

## **Conclusion and recommendation**

The waste hierarchy represents a fundamental part of the circular economy, making a priority order clear for the minimising and treatment of waste. It was clear from stakeholder comments that the 2011 Regulations are important in setting a legal commitment to apply the waste hierarchy although it is recognised that ensuring the application of the hierarchy is largely supported through other regulations and policies.

It is recommended that the legislation is retained. However, there is an opportunity to consider further the comments of stakeholders through a review of waste hierarchy guidance.

## Targets: Household Recycling, Construction materials and landfill

### Regulatory requirements and objectives

Prior to amendments made by the Waste (Circular Economy) (Amendment) Regulations 2020, Schedule 1 of the Regulations required WMPs to include measures to be taken to ensure that by 2020 at least 50%, by weight, of waste from households is prepared for re-use or is recycled. It also required WMPs to include measures to be taken to ensure that by 2020 at least 70%, by weight, of construction and demolition material is recovered.

As part of the Circular Economy 2020 Regulations these targets were superseded with a new requirement to ensure that the national waste management plan includes measures to prepare for re-use or recycling of at least 65%, by weight, of municipal waste by 2035. The WMP must also include measures to be taken to ensure that the amount of municipal waste landfilled is reduced to 10% or less of the total amount of municipal waste generated, by weight, by 2035.

The objective of the new provisions is to drive up recycling rates and reduce the amount of residual waste that ends up in landfill.

### Original assumed costs and benefits

The original impact assessment does not specify a cost associated with these targets. The reason is that the targets themselves, being national targets, were not anticipated to lead to direct costs rather the policies detailed in the R&W Strategy that support achieving the targets are where cost implications are considered.

Similarly, the 2018 PIR did not attribute direct costs for the same rationale. This was supported through stakeholder conversations.

As part of this PIR stakeholders were asked their views on costs associated with the targets. Overall, most responded that there were none or they were unsure. However, for household recycling target 5 out of 10 respondents (50%) felt there was an ongoing cost for local authorities associated with the target. One respondent suggested this was due to service changes implemented for recycling but again, this is more likely due to other policy interventions rather than the targets specifically.

### Evaluation of progress against regulations and objectives

#### Reflections on 2020 targets

Defra published statistics against the 2020 household recycling target and the construction target in January 2022. The reports show that by 2020 the waste from households

recycling rate was 44%. This was down from 45.5% in the previous year. The decrease in 2020 is primarily due to impacts of the COVID-19 pandemic, which saw waste services disrupted and civic recycling services closed. Nonetheless, the 2019 recycling figure was also below the 50% target. It is anticipated that the three major waste reforms, known as the Collection and Packaging Reforms, will incentivise improved design of packaging, reduce confusion around recycling, provide higher quality recyclate for reprocessors and increase recycling rates. Together, CPR is expected to make a significant contribution to improving municipal recycling rates.

The 2020 non-hazardous waste construction and demolition target of 70% recovery was exceeded. In 2020, the recovery rate was 92.6%<sup>15</sup>. While this target has now been removed from the Regulations, the construction sector is considered in the Maximising Resources Minimising Waste publication (the revised WPP). Here, it notes that construction materials are often downcycled, for example used to backfill holes in sites, which is not the most effective environmental outcome. The WPP therefore sets out further action that government intends to do to improve efficiency and recycling in the construction sector, including through improving design in construction to improve reuse of materials.

### Review of current targets

The new target for municipal waste requires measures to be set out in Waste Management Plans to achieve 65%, by weight, recycling of municipal waste. The WMP published in 2021 sets out the various policies that were deemed sufficient to reach 65% and so the regulatory requirement is satisfied. However, it is recognised that original assumptions need to be reviewed and a revised roadmap to reach 65% developed as some original assumptions have changed. This will help inform the next WMP review that will take place in 2027.

To further support a reduction in waste being sent to landfill, Defra published a call for evidence on the near-elimination of biodegradable waste going to landfill. The consultation ran from May to July 2023 and evidence submitted is being considered. This also supports a goal for the near-elimination of biodegradable waste going to landfill from 2028. It is expected that this policy will significantly contribute to reducing municipal waste ending up in landfill as well as helping to remove a waste stream that contributes significantly to methane emissions. Given this target is set for 2035 it is too early to determine success but this will be monitored as part of the monitoring of the R&W Strategy as well as in the next PIR. A municipal waste definition is being developed to support this.

### Stakeholder views

While the 2020 targets that were previously in the 2011 Regulations have been removed, given they were time-limited, we asked stakeholders about their views on the usefulness of the target for encouraging activity to increase recycling.

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<sup>15</sup> [UK statistics on waste - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/uk-statistics-on-waste)

For the 50% 2020 recycling target that was previously in the 2011 Regulations. 9 out of 11 (82%) respondents thought that it was useful in some way to have this target in the regulations. However, only 1 respondent thought it was 'very useful'.

The perceived usefulness of the construction target was more positive. 11 out of 12 respondents (92%) thought it had some level of use and 5 of those respondents (41% overall) thought it was 'very useful' in driving recycling of demolition and construction material.

When questioned about the new targets in the 2011 Regulations, 8 out of 10 respondents (80%) thought it was useful to have the target for municipal waste and 9 out of 11 (82%) respondents saw value in the landfill target now in regulations.

Stakeholders were asked their view on how to improve the usefulness of the targets.

Some suggested that it could be supported by improved communication from government on the Collection and Packaging Reforms as the lack of information, particularly on consistency (now Simpler Recycling), meant that local authorities could not move forward with plans for recycling. Other suggested improvements included transparency on materials that are still going to landfill, better clarity on definition of municipal waste, more investment in alternative disposal methods and coordinating a central database of available capacity to avoid reverting to landfill when an EfW facility is out of action. It was also noted that while the targets are useful, the ultimate driver for waste treatment is financial.

When asked how to improve the usefulness of the 2035 recycling target, stakeholders suggested a greater focus on business waste, a focus on carbon-based metrics, statutory guidance for producers to ensure design of products has reuse and recycling in mind, greater accountability for local authorities, funding to help reach the target, enforcement and explanation of how the target aligns with policies.

While there is no longer a construction target in the 2011 Regulations, we asked stakeholder views on any voluntary measures that might be useful for the construction and demolition sector. Suggestions included having an aggregate recycling target for all projects, having a percentage of materials that should be reused on site, focusing on building design to ensure materials can be recycled, forums for sharing materials and materials management plans that include metrics for waste and reuse.

## **Unintended consequences**

It was noted that a few unintended benefits of the targets were that it encouraged action by local authorities where it was thought to represent an individual local authority target rather than a national target.

A negative unintended consequence noted was that the targets can detract from taking a more holistic view, for example lead to a greater focus on recycling rather than activities to move waste further up the hierarchy towards prevention and reuse.

## **Conclusion and recommendation**

Based on stakeholder feedback it is clear that requiring the WMP to include measures to be taken to achieve the targets provide useful goals and these should be retained. However, there are developments that can be made outside of the legislative framework to address some of the stakeholder feedback. This includes ongoing work to define municipal waste as well as other metrics to support monitoring and evaluation of the R&W Strategy. Consideration also needs to be given to whether there are additional measures that could ensure a focus on activities higher up the waste hierarchy, which will be investigated further as set out in the MRMW.



## Separate Recycling Collections

### Regulatory requirements and objectives

Regulation 13 of the 2011 Regulations requires waste collectors who collect paper, metal, plastic and glass to do so by way of a separate collection. This was to be done by 2015 and was reported on in the last PIR.

In 2020 the regulations were updated under regulation 13 to remove the 2015 date and outline conditions or exceptions where collections may not need to be separate. The exceptions covered situations where it is determined not to be essential for the recycling of the material, it does not achieve best environmental outcome or there is a technical or disproportionate economic barrier.

The objective of this part of the regulations was to improve level and quality of recycling while ensuring that waste collection authorities can make sensible decisions about how best to collect waste for recycling where there is no overall benefit or where there are genuine limitations.

### Original assumed costs and benefits

The original impact assessment focused on the costs and benefits of implementing regulations to require the collection of different types of plastic since most local authorities already provided some form of service for paper, metal and glass. The impact assessment stated that only one local authority in England and Wales did not provide for the collection of paper, metal and glass whether by kerbside or through the provision of bring banks.

When assessing cost impacts therefore, the original impact assessment assumed that those who currently offer separate collections would continue to do so and the focus of the assessment was on impacts of implementing additional requirements, specifically around requiring local authorities to collect mixed plastics.

It was estimated that should the kerbside collection of mixed plastics be additionally required then the cost to local authorities would be between £26.3m and £80.6m per year. This option was not pursued as a decision was taken to reserve judgement on requiring any additional separate collection requirements until markets for mixed plastics were more mature.

In the R&W Strategy 2018 Defra launched proposals for significant reforms of the recycling sector covering consistent and separate collections of metal, glass, plastic, paper and card, food and garden waste. This was termed 'Consistency in Recycling in England'. A consultation was launched in 2019 to seek views on materials to be collected from both households and non-households. A second consultation was held in 2021, which proposed further specifics on materials in scope and implementation dates, amongst other policies. The government response for what is now termed 'Simpler Recycling' was published on 21 October 2023. A full impact assessment was produced for the new proposals. However, they will no longer pertain to the 2011 Regulations as this part of the 2011 Regulations will be removed once the policy comes into force. Given the level of consultation carried out with stakeholders it was decided not to ask further questions on

costs using the survey as it would not add value and stakeholders had already engaged on the evolved policy.

## **Evaluation of progress against regulations and objectives**

Since the last PIR Defra published the R&W Strategy, which is a key strategic publication outlining policies that will transform the requirements around recycling collections.

Following publication of the R&W Strategy, Defra has carried out two consultations. First in 2019, which set out the first stage of proposals around materials for local authorities to collect from households as well as requirements for businesses to present materials for collection. Following this first consultation, new measures were introduced via section 57 of the Environment Act 2021, which amends the Environmental Protection Act 1990.

Further to the 2019 consultation, a second consultation was carried out in 2021 on further detail on policy, including materials in scope and implementation dates. The [government response to this consultation was published on 21 October 2023](#). It confirms requirements for local authorities to provide collections for organic waste (food and garden waste) and dry recyclables (paper, card, metal, glass and plastic). The measures will come into force from 2025 for businesses and relevant non-domestic premises, except micro-firms who will have until 2027, and 2026 for households.

### Stakeholder views

The consultation held in 2021 ran for eight weeks and received 896 responses.

We consulted on allowing the following dry recyclable waste streams to be collected together – plastic and metal, and glass and metal. We received support for the provision of these exceptions. For plastic and metal, of the 651 respondents, the majority (72%) agreed, with 5% disagreeing, and 23% not expressing an opinion. For glass and metal, of the 647 respondents, 58% agreed, 12% disagreed, and 30% did not express an opinion. Several respondents noted that these materials are routinely collected together at kerbside for recycling.

## **Unintended consequences**

Research by the Waste and Resources Action Programme (WRAP) indicated that the most important features of a recycling service identified by householders are having a regular and reliable service and being clear on what can/cannot be recycled<sup>16</sup>. The policy development of Consistency in Recycling, now termed Simpler Recycling, was proposed to address the unintended consequence that not all local authorities collect the same materials for recycling and the fact that, despite regulations in place, recycling rates have plateaued in

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<sup>16</sup> [Recycling Tracker Report 2020: Behaviours, attitudes and awareness around recycling | WRAP](#)

England at around 44-45% in the last few years<sup>17</sup>. It was apparent therefore that the regulations as they are, were not sufficient to further drive recycling rates. Ongoing dialogue with stakeholders highlights the importance of government being clear on policy details and implementation. The unintended consequence of uncertainty in this area is that key decisions e.g. in relation to contracts or infrastructure, cannot be made in preparation until confirmation of information and funding is provided. These are views that have been raised when speaking to local authorities since the 2021 consultation.

## **Conclusion and recommendation**

This part of the 2011 Regulations covering separate collections must be retained at present but to avoid legal ambiguity they will be repealed with respect to England to align with implementation dates for Simpler Recycling in England, from 2025 once the new measures that cover broader recycling collections come into force.

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<sup>17</sup> [UK statistics on waste - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/uk-statistics-on-waste)

# Waste infrastructure

## Regulatory requirements and objectives

Part 6 of the Regulations sets out duties for planning authorities to apply when exercising their planning functions in relation to waste management. These duties include ensuring that waste management is carried out without endangering human health and without harming the environment, and to apply the principles of self-sufficiency and proximity. Other duties relate to granting of planning permission for landfills and appropriate periodic inspection of waste disposal and recovery establishments or undertakings.

Schedule 1, Part 1 of the 2011 Regulations requires Waste Management Plans to include the requirement to apply the self-sufficiency and proximity principles to meet one of the objectives of the Waste Management Plan, which is to ensure an integrated and adequate network of installations for waste disposal and the recovery of mixed municipal waste from household waste. The objective is to support, along with other relevant legislation outside of the 2011 Regulations, development of suitable waste infrastructure across the UK.

The National Planning Policy on Waste recommends applying the self-sufficiency and proximity principles when identifying suitable sites and areas for inclusion in Local Plans. The WMP for England, last updated in 2021, advises that the self-sufficiency and proximity principles must be applied when decisions are taken on the location of appropriate waste facilities, and that the network shall be designed in such a way as to enable a movement towards the aim of self-sufficiency.

## Original assumed costs and benefits

When the impact assessment was developed for transposition of the rWFD consideration was given to the requirements for self-sufficiency and proximity principles to be applied. At that time the waste planning system already required local authorities to plan for an adequate network of facilities for managing waste at all steps in the waste hierarchy. It was recognised that current policy already met EU requirements and therefore no additional cost burden foreseen.

In the last PIR no costs to businesses were determined.

As part of this PIR, stakeholders were asked for views on costs. 5 out of 9 respondents (56%) thought that applying the principles of self-sufficiency and proximity to waste infrastructure planning generated some cost where time and resources were required to address the principles as part of planning proposals. One stakeholder suggested around £5,000 per annum but it appears to be difficult to single out a cost purely associated with the application of these principles.

## Evaluation of progress against regulations and objectives

The requirements for considering self-sufficiency and proximity when decisions are taken on the location of appropriate waste facilities remain a part of the latest Waste Management Plan 2021 as well as the latest National Planning Policy for Waste.

The R&W Strategy 2018 set out a view on future waste infrastructure to ensure capacity in England meets our needs. This view forms a broader view on infrastructure in the context of improved recycling and a circular economy, which the 2011 Regulations play a role in supporting.

It is difficult to evidence effectiveness of the 2011 Regulations as they do not solely drive infrastructure planning.

Evidence gathered from stakeholders suggested that the current requirements to apply these principles have not led to an integrated and adequate network of waste infrastructure and that there is inadequate distribution of waste treatment capacity across the country. The waste industry's reliance on exports of Refuse Derived Fuel (RDF) was cited as evidence that self-sufficiency has not been achieved.

However, there was also evidence of the correct application of the principles influencing positive change. One example reported there was a decrease in waste going to landfill due to greater infrastructure capacity for recycling, recovery and Energy from Waste (EfW). In the 2017/18 financial year, 13.1% of Local Authority Collected Waste (LACW) was sent to landfill. By 2021/22, 1% of LACW was sent to landfill.

### Stakeholder views

From stakeholders surveyed 14 out of 17 respondents (82%) stated that they gave regard to the 2011 Regulations when planning for waste infrastructure and/or determining planning applications. Most respondents found the Regulations moderately useful in supporting planning for waste infrastructure. Similarly, when considering the use of the 2011 Regulations for ensuring application of the proximity and self-sufficiency principles most respondents thought the regulations were slightly or moderately useful.

The elements of the regulations that stakeholders found most useful were that it provided clear scope and useful reference points, principles of self-sufficiency and proximity are key concepts and have clear sustainable benefits.

4 out of 9 respondents (44%) thought that the Regulations had led to positive effects as it focused attention and supported collaboration across boundaries, although it was thought it had also led to an imbalance of capacity across the country.

Several respondents felt the usefulness of the Regulations relating to planning for waste infrastructure has decreased over time. It was suggested that the self-sufficiency and proximity principles are very idealistic and do not take account of the effects of the market, or considerations around carbon benefits of other infrastructure, for example, exporting RDF to a facility that is enabled for combined heat and power instead of treating it locally. It was also felt that the National Policy Planning Framework (NPPF) shifted focus from the regulations and that some of the terms and references are outdated and/or relate to EU legislation that is not always appropriate any longer as definitions needed to be freestanding in the event there is any divergence between UK and EU regulations in future.

## **Unintended consequences**

When questioned, stakeholders highlighted some examples of unintended consequences. 5 out of 9 respondents (56%) thought there were negative unintended consequences.

The reasons cited included delays to providing treatment capacity, additional costs for land, inability to add capacity to sites that have been purchased by developers and difficulties in transboundary movement of waste where capacity is constrained to a geographic location. It was also noted that there is sometimes conflict between proximity principles and facilities that are better located in open areas away from the source of waste.

## **Conclusion and recommendation**

The 2011 Regulations influence waste infrastructure through the requirement to consider proximity and self-sufficiency principles. These are referenced in the Waste Management Plan but also supported through the NPPF. There is evidence to support the value of the 2011 Regulations in supporting waste infrastructure but there is also evidence of failings in the wider system.

It is recommended that this part of the regulations is retained as it supports and reinforces waste considerations in planning functions. Defra will continue to work closely with DLUHC to ensure that this part of the regulations continues to be reflected in planning policy.

## Carriers, brokers and dealers

### Regulatory requirements and objectives

Part 8 of the 2011 Regulations relates to requirements for all carriers, brokers and dealers of waste to register with the Environment Agency. This sits alongside wider requirements in the Control of Pollution (Amendment) Act 1989.

The objective of the legislation is to ensure that those transporting waste or acting as brokers of or dealers in waste are appropriately registered.

There have been no significant changes to legislation since the previous PIR was conducted.

### Original assumed costs and benefits

The initial impact assessment estimated transition costs of £5.4 to £11.1m to businesses carrying waste 'normally and regularly'. In addition, there was an anticipated one-off cost of £140,000 to the Environment Agency accounting for IT costs for the register.

The ongoing cost to business was estimated at £0.6m to £1.4m, which covers registrations per year for new carriers of waste. However, the PIR carried out in 2017 suggested that annual costs are more likely significantly lower at between £0.26m and £0.35m. The PIR also suggested an ongoing cost to the Environment Agency of £140,000 for running of the carriers, brokers, dealers system. This was reported in the PIR published in 2018.

The consultation stage impact assessment for carriers, brokers and dealers reform was produced in 2021. This estimated a total cost of £217m over the 10-year appraisal period for the preferred option, with £211m of this being cost to business. The business net present value was estimated at -£57m, which includes the business portion of the benefits from reduced waste crime. The total benefits from reduced waste crime were estimated at £178m. Cost and benefit estimates will be updated for the final impact assessment. Total costs are expected to increase compared to consultation stage, due to the monetisation of subsistence fees and technical competence qualification costs. Total benefits are also expected to increase compared to consultation stage, due to increased cost of waste crime estimates.

### Evaluation of progress against regulations and objectives

In 2018 an Independent Review into Serious and Organised Crime in the Waste Sector<sup>18</sup> made a recommendation to reform the registration and duty of care requirements for carriers, brokers and dealers. It also commented that legislation did not account for how industry has evolved and made clear there were opportunities for improvement in the regulations covering carriers, brokers and dealers of waste..

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<sup>18</sup> [Independent review into serious and organised crime in the waste sector \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

In the previous PIR stakeholders highlighted that waste crime remained a significant problem and that the current CBD system did not ensure competence or compliance with the Duty of Care regime.

The R&W Strategy 2018 set out a commitment to improve the transport, management and description of waste through reforms including those for carriers, brokers and dealers.

Defra worked with regulators to build upon proposals from the waste industry to reform the CBD regime. This culminated in a consultation that sought views on proposals to:

- Move from a registration to a permit-based system and the types of permits available
- Include certain activities by permits, including exceptions
- Introduce a technical competence element required for permits

In January 2022 a consultation was launched proposing reforms to the carriers, brokers and dealers' requirements for England. The proposals aim to modernise the current approach and move to a predominantly online permitting system, making it easier to use and strengthening powers to fight waste crime. The cost of waste crime to the English economy in the 2018/19 financial year was estimated at £924m, which is primarily made up of lost revenue to legitimate businesses, loss of Landfill Tax and costs of clearing abandoned waste.

The government response to the consultation was published on 21 October 2023. The response confirms plans to simplify terminology, move to a permit-based system with three different permit types and each one differentiated according to activity. It also set out requirements for advertising, exceptions, requirements for renewals of permits and the approach to compliance and enforcement.

The changes are expected to be brought into force in 2025 and represent a significant change in the approach to CBD in England. Part 8 of the 2011 Regulations will therefore be amended by removing the CBD requirements pertaining to England as the reforms will form part of new permitting legislation. The registration requirements in the 2011 Regulations will remain for Wales but that is beyond the scope of this PIR.

### Stakeholder views

Recent stakeholder comments, which are evidenced from the consultation in 2022 demonstrate that stakeholders are supportive of the proposed changes. 73% of respondents agreed that the current CBD regime should be brought under environmental permitting regulations and 70% agreed that technical competence should be introduced for the proposed permits. More details can be found in the [government response](#).

### **Unintended consequences**

The main unintended consequences or concerns highlighted through consulting with stakeholders were that the proposals could result in increased costs to businesses and lead to increasing consumer prices. This in turn could increase demand for illegal waste services. There was also concern raised about there being different regimes across the UK.



## **Conclusion and recommendation**

There are opportunities to improve the current CBD regime. This has been determined through an independent review as well as ongoing engagement with stakeholders and through a formal consultation. It is recommended that the 2011 Regulations be repealed for England. This is to allow for a more effective permitting regime to be brought in.

The regulations for Wales will not be impacted. This PIR reflects the position in England only.

## Waste information notes

### Regulatory requirements and objectives

Regulation 35 of the 2011 Regulations require importers, producers, carriers, brokers or dealers of non-hazardous controlled waste and those who keep or treat controlled waste to note and retain information relating to the quantity of waste, the storage of waste and information relating to the transfer of the waste. These requirements work alongside requirements in the Environmental Protection Act 1990, which already set out duty of care provisions. However, the 2011 Regulations also required transferers of waste to confirm that duties are discharged in line with the waste hierarchy. The purpose is to ensure there is traceability of waste and ensure that waste is managed appropriately.

### Original assumed costs and benefits

Given that the Environmental Protection Act 1990 already placed obligations on importers, producers, carriers, brokers and dealers and those who keep or treat controlled waste to provide and retain information about waste storage and transfer, it was determined that there was no significant additional cost foreseen except for the additional requirement of applying the waste hierarchy. As previously noted, it was estimated that there would be a cost to waste producers of having to read and understand relevant guidance on waste hierarchy and confirm this as part of their Duty of Care declaration. The transition costs to businesses were estimated to be between £21.9m and £38.3m with ongoing costs of £2.6m - £4.6m after transition.

### Evaluation of progress against regulations and objectives

The Independent Review of Serious and Organised Waste Crime 2018<sup>19</sup> included recommendations relating to the electronic tracking of waste information. Specifically the report found the current system inadequate and suggested digitisation of the current waste transfer note system. The report also described issues with the information in waste information notes citing evidence that terms were often meaningless and represented a potential weakness of the broader system.

The weaknesses of the wider regime, which include processes around waste information notes, were also reflected in stakeholder comments in the previous PIR. In the 2018 R&W Strategy it was confirmed that a consultation would be published to gather views on proposals to legislate on waste information and details of transfer, making the requirements digital and mandatory. This was designed to address the concerns raised and the recommendations made in the independent report.

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<sup>19</sup> [Independent review into serious and organised crime in the waste sector \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724242/independent-review-into-serious-and-organised-crime-in-the-waste-sector.pdf)

In January 2022 a consultation<sup>20</sup> was published on the introduction of mandatory digital waste tracking. The consultation, which is UK wide, seeks to address the problem that there is no single or comprehensive way of tracking waste, with information not being collated or held centrally. Joining up the currently fragmented and paper-based system will make it easier for legitimate businesses to comply with requirements while making it harder for rogue operators to compete.

The government response, setting out the approach to digital waste tracking was published on 21 October.

The Environment Act 2021 includes powers to implement a digital waste tracking service. The intention is to bring new legislation through which the equivalent 2011 Regulatory requirements will be removed.

### Stakeholder views

In the last PIR stakeholders were asked what changes they would like to see in the sector in the longer term – a Waste Tracking service will help to deliver on two of these proposed changes.

In particular, businesses asked the government to:

- further develop the electronic duty of care (EDOC) platform and increase uptake to improve data on the use and movement of materials and facilitate compliance work. In order to limit burdens, ensure that EDOC can be integrated with existing waste information management services; and
- improve monitoring and evaluation.

Given the recent consultation on digital waste tracking, which incorporates requirements relating to waste information notes, we did not seek further views from stakeholders as part of this PIR as it could not have added value. Instead we have used the waste tracking consultation responses to evaluate stakeholder opinions.

The consultation sets out proposals on types of waste that should be captured, the information that should be recorded about these waste types (including type of treatment) and any exceptions. From 702 responses received across a wide cross-section of organisations, the feedback from consultation showed that 73% of respondents agreed with the waste activities that should be recorded in the waste tracking service. It also showed that respondents broadly agreed with the information that should be recorded (agreement ranged from 63% to 85% when stakeholders were asked views on specific pieces of information to be recorded).

When asked about application of the waste hierarchy, 77% of 682 respondents confirmed that they were aware of their duty to apply the waste hierarchy. When asked whether producers of waste should confirm application of the waste hierarchy 53% of 683

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<sup>20</sup> [Introduction of Mandatory Digital Waste Tracking \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

respondents said 'yes', 19% said 'no' and 28% selected 'no opinion'. Some stakeholders suggested that it could be made easier if there were waste hierarchy options to choose from in the online system or codes that could be assigned. While other stakeholders suggested a tick-box type system was not useful and that evidence or a statement should be provided to ensure compliance.

## **Unintended consequences**

The main unintended consequence is that the system can be open to abuse and non-compliance, which allow illegal activity and therefore generates costs. This undermines legitimate businesses abiding by duty of care requirements. It has also been highlighted, and evidenced through independent review, that the waste information notes are ambiguous and do not support accurate capture or tracking of waste information.

The upcoming digital waste tracking service will help to address these unintended consequences.

## **Conclusion and recommendation**

Following an independent review of Serious and Organised Waste Crime it has been recognised that there are opportunities to improve waste tracking. The previous PIR highlighted concerns from stakeholders that a digital system was needed to facilitate compliance and ensure meaningful and accurate information about waste was recorded and tracked. A consultation was held in 2022 on a mandatory digital waste tracking service and the government response was published on 21 October 2023. It is anticipated that the mandatory digital waste tracking service will come into force from April 2025 but this is subject to approval across all four legislatures.

It is recommended that this section of the 2011 Regulations be repealed as waste information requirements will need to be captured as part of new digital waste tracking regulations.

## **Annex A – list of supporting evidence**

Independent review into serious and organised crime in the waste sector.  
[Independent review into serious and organised crime in the waste sector \(publishing.service.gov.uk\)](#)

Rethinking Waste Crime

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/915937/waste-crime-review-2018-final-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915937/waste-crime-review-2018-final-report.pdf)  
[http://www.esauk.org/application/files/7515/3589/6448/20170502\\_Rethinking\\_Waste\\_Crime.pdf](http://www.esauk.org/application/files/7515/3589/6448/20170502_Rethinking_Waste_Crime.pdf)

Consultation on the reform of the waste carrier, broker, dealer registration system in England

[Consultation on the reform of the waste carrier, broker, dealer registration system in England - Defra - Citizen Space](#)

Waste carrier, broker and dealer system reform

[Government response and summary of responses - GOV.UK \(www.gov.uk\)](#)

Introduction of Mandatory Digital Waste Tracking summary of responses [Introduction of Mandatory Digital Waste Tracking \(publishing.service.gov.uk\)](#)

Introduction of mandatory digital waste tracking

[Introduction of mandatory digital waste tracking - Defra - Citizen Space](#)

Government response on mandatory digital waste tracking

[Government response - GOV.UK \(www.gov.uk\)](#)

Introducing Consistency in Household and Business Recycling in England Consultations

[Consultation on Consistency in Household and Business Recycling Collections in England - Defra - Citizen Space](#)

[Consistency in Household and Business Recycling in England - Defra - Citizen Space](#)

Consistency in recycling collections in England: executive summary and government response

[Consistency in recycling collections in England: executive summary and government response - GOV.UK \(www.gov.uk\)](#)

Government response, Simpler Recycling

[Government response - GOV.UK \(www.gov.uk\)](#)

UK Statistics on Waste

[UK statistics on waste - GOV.UK \(www.gov.uk\)](#)

Resources & Waste Strategy: monitoring and evaluation

[Resources and waste strategy for England: monitoring and evaluation - GOV.UK \(www.gov.uk\)](#)

Food and Drink Waste Hierarchy

[Food and drink waste hierarchy: deal with surplus and waste - GOV.UK \(www.gov.uk\)](#)

The Plastics Waste Hierarchy [The Plastics Waste Hierarchy | WRAP](#)

Guidance on applying the waste hierarchy

[Waste hierarchy guidance \(publishing.service.gov.uk\)](#)