

EXPLANATORY MEMORANDUM TO
THE WASTE (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2012

2012 No. 1889

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 This instrument amends the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) (“the 2011 Regulations”) to substitute regulations 13 and 14(2), to ensure correct transposition of provisions of Directive 2008/98/EC (the revised Waste Framework Directive’) relating to the separate collection of waste.

2.2 This instrument is made on a composite basis with the Welsh Ministers.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 As the Department is making these Regulations to ensure correct transposition of provisions of the revised Waste Framework Directive, this instrument is being issued free of charge to known recipients of the 2011 Regulations.

4. **Legislative Context**

4.1 The 2011 Regulations were made under section 2(4) of the Pollution Prevention and Control Act 1999 and section 2(2) of the European Communities Act 1972, and transposed, for England and Wales, the revised Waste Framework Directive. This instrument, which deals with a more limited transposition issue, is made solely under section 2(2) of the European Communities Act 1972.

4.2 Judicial review proceedings were brought in relation to the way the 2011 Regulations transposed the requirements of the revised Waste Framework Directive relating to the separate collection of waste (dealt with in Articles 10 and 11 of that Directive). In December 2011 those proceedings were stayed on the undertaking of the Department and the Welsh Ministers to consult on proposals to amend the 2011 Regulations. Following that consultation, these Regulations are being made.

5. **Territorial Extent and Application**

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Waste (England and Wales) Regulations 2011 transposed provisions of the revised Waste Framework Directive relating to the separate collection of waste paper, metal, plastic and glass. Regulation 13(2) of those Regulations provided that “For the avoidance of doubt, co-mingled collection (being the collection together with each other but separately from other waste of waste streams intended for recycling with a view to subsequent separation by type and nature) is a form of separate collection”.

7.2 Judicial Review proceedings were brought, challenging the transposition of the revised Waste Framework Directive and, in particular, the provision relating to co-mingled collection. Defra and the Welsh Government accepted that the original regulation 13 did not properly implement the requirements of the revised Waste Framework Directive in relation to separate collection, and that consequently the 2011 Regulations needed to be amended.

7.3 This instrument amends the 2011 Regulations by replacing regulation 13 so as to impose a duty on establishments and undertakings, from 1 January 2015, for the separate collection of waste paper, metal, plastic and glass. It also imposes a duty on waste collection authorities, from that date, when making arrangements for the collection of such waste, to ensure that those arrangements are by way of separate collection. These duties apply where separate collection is “necessary” to ensure that waste undergoes recovery operations in accordance with the Directive and to facilitate or improve recovery; and where it is “technically, environmentally and economically practicable”. Where such collection is not so necessary or not so practicable the duties relating to separate collection do not apply, and collection may accordingly be by other means. The duties apply to waste classified as waste from households and waste that is classified as commercial or industrial waste.

7.4 This instrument also replaces regulation 14(2) for reasons of consistency of approach, and makes consequential changes to reflect changes in paragraph numbering in the new regulation 13.

8. Consultation outcome

- 8.1 A joint consultation between Defra and the Welsh Government was held between 23 February and 12 April 2012. The reason for the shorter consultation period was that the consultation was about a specific issue targeted at a specialist audience. However, there was still wide consultation in order to give everyone an opportunity to respond. The

consultation paper, and Summary of Responses and Government Response to the Consultation, are available at: <http://www.defra.gov.uk/environment/waste/>

A copy of the consultation responses will be placed in the Library.

8.2 After considering the responses to the consultation, the approach to transposition was reconsidered. Rather than follow the exact text for amending regulations that was consulted on, the approach has been revised to a more direct reflection of the language of the Directive.

9. Guidance

9.1 Regulation 15 of the Waste (England and Wales) Regulations 2011 provides that the appropriate authority (the Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales) may give guidance of the discharge of the duties in regulations 12 to 14. The Secretary of State and the Welsh Ministers each intend to produce and consult on statutory guidance to ensure a consistent understanding of what the obligations on separate collection mean.

10. Impact

10.1 There is no additional impact on business, charities, voluntary bodies or the public sector. It remains the intention that, acting in accordance with the requirements of the 2011 Regulations, local authorities and waste management companies should retain the ability to determine the most appropriate collection method for their local circumstances, having regard to the need to meet the purpose of the Directive.

10.2 As a result, a Revised Impact Assessment has not been produced. There is no change to the Impact Assessment produced previously for the consultation on the Waste (England and Wales) Regulations 2011.

11. Regulating small business

11.1 There is no additional impact on small business.

12. Monitoring & review

12.1 This instrument inserts into the 2011 Regulations a provision requiring the Secretary of State to carry out in England periodical reviews of the Regulations and to publish reports setting out the conclusions of such reviews (no longer than 5 years apart).

13. Contact

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