

# Consultation on amending the Waste Regulations (Northern Ireland) 2011

A CONSULTATION PAPER



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## **Consultation on amending the Waste Regulations (Northern Ireland) 2011**

### **Overview**

The Waste Regulations (Northern Ireland) 2011 (“the NI Regulations”) transpose the revised Waste Framework Directive 2008/98/EC (“the Directive”) in Northern Ireland. The equivalent legislation in England and Wales is the Waste (England and Wales) Regulations 2011 (“the E&W Regulations”)

The E&W Regulations have been challenged by way of an application for a Judicial Review on the ground that they allow co-mingled collection to be regarded as a form of separate collection. We are aware that a challenge along the same lines is being prepared here.

The crux of the challenge is that the treatment of co-mingled collection as a form of separate collection in the transposing Regulations is contrary to an objective of the Directive, ie, to take measures to promote high quality recycling and, to this end, to set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors. As a consequence, it is further argued that the UK has failed properly to transpose the Directive in this regard.

We have carefully considered the issues involved. We have taken legal advice and we have liaised with Defra and the Welsh Government who have conceded the argument and have undertaken to amend their legislation accordingly.

The NI Regulations are set out slightly differently from the E&W Regulations. However, following legal advice, it has been concluded that the effect is broadly the same and it is agreed that an amendment to the NI Ireland Regulations is required to ensure that legislation in Northern Ireland reflects the Directive more accurately.

Regulation 21 of the NI Regulations provides that co-mingled collection shall be regarded as separate collection. The Department, therefore, proposes to amend the NI Regulations so as to remove regulation 21.

The purpose of this consultation is to ascertain whether the proposed amendment would serve to better transpose the Directive.

The Department is also using this as an opportunity to effect some corrections to amendments to subordinate legislation effected by the NI Regulations. These do not entail any change in policy or any legislative change and so are not subject to consultation. They are included solely in the interests of completeness.

The draft Waste (Amendment) Regulations (Northern Ireland) 2012 are reproduced in full at Annex A.

## 1. Background

- 1.1 The revised Waste Framework Directive 2008/98/EC<sup>1</sup> (“the WFD”) came into force across Europe in December 2008. It included a number of new provisions that required to be transposed into UK law. In order to transpose the WFD in Northern Ireland, the Department conducted a two-stage consultation.
- 1.2 Stage One was issued in October 2009 and explained the WFD’s objectives, and invited views on the transposition and implementation of specific provisions.
- 1.3 Stage Two was issued in September 2010 and sought views on draft Waste Regulations to transpose the revised WFD in Northern Ireland as well as the draft guidance on applying the waste hierarchy here.

### The Directive

1.4 Article 10 (1) and 10(2) of the WFD provides:

- *10(1) Member States shall take the necessary measures to ensure that waste undergoes recovery operations, in accordance with Articles 4 and 13.*
- *10(2) Where necessary to comply with paragraph 1 and to facilitate or improve recovery, waste shall be collected separately if technically, environmentally and economically practicable and shall not be mixed with other waste or other material with different properties.*

1.5 Article 11(1) requires Member States:

- *To “take measures to promote high quality recycling and, to this end,” to “set up separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors”; and*
- *To set up separate collection “for at least the following: paper, metal, plastic and glass” by 2015. This requirement is subject to Article 10(2) of the rWFD (see above).*

1.6 It is accepted that the specific obligation to separately collect at least the four named materials by 2015 cannot be considered in isolation from the rest of the WFD and in particular from Articles 10 and 11.

1.7 Incidentally, the terms “collection” and “separate collection” are defined respectively at Articles 3(10) and 3(11) of the WFD:

- *“the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility”*

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0030:EN:pdf>

- *“‘separate collection’ means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment”*

1.8 In October 2008, by way of a Minute Statement, the UK informed the European Commission of the following:

*“In implementing the requirements of Article 11 of the revised Directive on re-use and recycling, the United Kingdom intends to:-*

*- encourage the separate collection of wastes where this is technically, environmentally and economically practicable, while allowing the co-mingled collection of paper, metal, plastic, glass and other recyclable materials for subsequent separation in material recycling facilities to continue after 2015 where this is the most effective means of increasing recycling rates in the local circumstances.”*

This statement reflected the NI position at the time.

The Commission accepted this statement but in more recent draft guidance (not yet finalised or publicly available) it has indicated that ‘co-mingled’ is not regarded as the same as ‘separate collection’ as defined in the WFD. However, it recognises (within the guidance) that co-mingled collection of single waste streams (mostly dry recyclables) may be accepted, provided it meets the principles of Articles 4 (the Waste Hierarchy) and 11 of the WFD

## **Transposition**

1.9 The Waste Regulations (Northern Ireland) 2011 transpose the requirements of the WFD and include the following provisions:

### ***Duties in relation to collection of waste***

*18—(1) A district council, when collecting waste paper, metal, plastic or glass shall, from 1st January 2015, take all such measures to ensure separate collection of that waste as are available to it and are—*

- (a) technically, environmentally and economically practicable;*
- (b) appropriate to meet the necessary quality standards for the relevant recycling sectors.*

*(2) A district council, when making arrangements for the collection of waste paper, metal, plastic or glass, shall, from 1st January 2015, take measures to ensure that those arrangements are by way of separate collection.*

*(3) The duties under paragraphs (1) and (2) shall apply only where keeping waste separate facilitates or improves recovery.*

### ***Duty in relation to collected waste***

*19.—(4) A district council which collects, transports or receives waste paper, metal, plastic or glass shall, from 1<sup>st</sup> January 2015, take measures to ensure that where that waste has been separately collected it is not mixed with other waste or other material with different properties.*

*(5) The duty under paragraph (1) shall apply only where keeping waste separate facilitates or improves recovery.*

***Duty in relation to collected waste by private operators***

*20. The duties under regulations 18 and 19 shall apply equally to a person required to be registered as a carrier of controlled waste for the purposes of the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999<sup>(2)</sup> as they apply to district councils.*

***Co-mingled waste***

*21. Co-mingled collection is a form of separate collection for the purposes of regulations 18, 19 and 20.*

1.10 In addition, the Regulations include a more general requirement in relation to separate collection and the promotion of high quality recycling in the context of the Waste Management Strategy. Regulation 8 inserts a new Schedule 3 into the Waste and Contaminated Land (Northern Ireland) Order 1997 the effect of which is to widen the matters which must be included in the Waste Management Strategy. In particular, paragraph 7(b) of Part 2 of Schedule 3 provides:

*“measures to promote high quality recycling including the setting up of separate collections of waste where technically, environmentally and economically practicable.”*

**Purpose of consultation**

2.1 In the context of recent developments and, in particular, the threat of Judicial Review proceedings and noting Defra and the Welsh Government’s position, we have re-considered our interpretation of Article 11(1) of the WFD and our approach to transposition. In addition, we have considered the draft guidance of the European Commission (previously referred to).

2.2 The draft guidance has provided greater clarity on the Commission’s interpretation of the requirements for separate collection.

2.3 Taking all the above considerations into account, we are satisfied that it is necessary to amend our regulations along the same lines as DEFRA and the Welsh Government are amending theirs so as to ensure effective transposition and to avoid the risk of a successful judicial review challenge .

2.3 We, therefore, propose an amendment to the NI Regulations so as to revoke regulation 21. This will clarify that co-mingled collection is not the same as separate collection. We believe that this amendment will ensure that the NI Regulations reflect the WFD more accurately and will have the added advantage of maintaining parity with the remainder of the UK.

**3 Approach to separate collection of recycling in the Directive**

3.1 The stated purpose of the provisions on separate collection in the WFD is to facilitate and improve recovery (Article 10(2)), and to promote high quality recycling (Article

11(1)). Looking more broadly at the whole of Article 11, the purpose can be seen as to increase the quantity of recycling and to improve the quality of recycling.

3.2 Article 10(2) includes a general obligation to encourage separate collection to facilitate recovery. Building on this, Article 11(1) includes an obligation to introduce separate collection to facilitate recycling. This is then developed into an obligation to introduce separate collection of at least paper, glass, metal and plastic by 2015. This last obligation is qualified through a reference back to being subject to Article 10(2).

During negotiation of the WFD, the UK understood it was not the intention of the European Commission to mandate a particular system for the collection of recycling across all Member States. The WFD expresses a preference for separate collection of recyclates, as the means most likely to achieve the purpose of the WFD. This preference for separate collection does not mean that separation at a subsequent point (ie, what can generally be referred to as co-mingled collection) is not permissible under the WFD. However, Article 11 specifically requires member states to set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors. This requirement is predicated on the basis that this will promote high quality recycling.

#### **4 Proposal for amending the Regulations**

4.1 The proposed draft amending Regulations revoke regulation 21 and in so doing remove the provision that accepts co-mingled collection as a form of separate collection. District councils and waste management companies will be required, therefore, to satisfy themselves that their collection systems comply with the requirements of the Regulations as amended and particularly so in circumstances where they accept co-mingled waste for collection purposes.

4.2 As the Impact Assessment produced for the Stage Two consultation on the revised Waste Framework Directive provided costings in relation to various forms of separate collection, it has not been necessary to produce a separate Impact Assessment.

**Question: The purpose of this consultation is to clarify ‘separate collection’ and to propose an amendment to the Waste Regulations (Northern Ireland) 2011 to reflect this. Do you agree that the amendments proposed to the Regulations adequately transpose the requirements of the WFD? If not, please give reasons to support your view that it is not adequately transposed in the proposed amendments.**

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<sup>(2)</sup> S.R. 1999 No. 362

## 6. Timing and Responses

Comments in relation to the consultation paper should arrive with the Department by **12 October 2012** and be sent to:-

**Alison Simms  
Environmental Policy Division  
Department of the Environment  
Goodwood House  
44 -58 May Street  
Town Parks  
BELFAST  
BT1 4NN**

E-mail: [Alison.simms@doeni.gov.uk](mailto:Alison.simms@doeni.gov.uk)

OR Fax: 02890 256079

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 STATUTORY RULES OF NORTHERN IRELAND
 

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2012 No.

**ENVIRONMENTAL PROTECTION****The Waste (Amendment) Regulations (Northern Ireland) 2012**

*Made* - - - - 2012  
*Coming into operation* - 2012

The Department of the Environment having been designated<sup>(3)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(4)</sup> in relation to measures relating to the prevention, reduction and elimination of pollution caused by waste.

The Department of the Environment acting in exercise of the powers conferred upon it by that section and by Article 5(7) of the Waste and Contaminated Land (Northern Ireland) Order 1997<sup>(5)</sup> and Sections 7(1), 7(2) and 25(3) of the Food and Environment Protection Act 1985<sup>(6)</sup>, hereby makes the following Regulations.

**PART 1****Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Waste (Amendment) Regulations (Northern Ireland) 2012 and shall come into operation on XXX 2012.

(2) The Interpretation Act (Northern Ireland) 1954<sup>(7)</sup> shall apply to these Regulations as it applies to an Act of the Assembly.

**PART 2****Amendment of the Waste Regulations (Northern Ireland) 2011**

2. The Waste Regulations (Northern Ireland) 2011<sup>(8)</sup> shall be amended in accordance with regulations 3 to 7.

**Amendment of regulation 9 (Interpretation of Part 3)**

3. In regulation 9 paragraph (1) omit the following definition-

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<sup>(3)</sup> S.I. 2008/301  
<sup>(4)</sup> 1972 c.68  
<sup>(5)</sup> S.I.1997/2778 (N.I. 19)  
<sup>(6)</sup> 1985 c.48  
<sup>(7)</sup> 1954 c.33 (NI)  
<sup>(8)</sup> S.R.2011 No. 127

“co-mingled collection” means the collection of waste streams intended for recycling together with each other but separately from other waste.

#### **Amendment of regulation 13 (review and modification of waste prevention programmes)**

4. In regulation 13 paragraph (1) omit “shall”.

#### **Revocation of regulation 21 (co-mingled waste)**

5. Regulation 21 is revoked.

#### **Revocation of regulation 26 (Amendment of the Deposits in the Sea (Exemptions Order) (Northern Ireland) 1995<sup>(9)</sup>)**

6. Regulation 26 is revoked.

#### **Revocation of regulations 66 (Amendment of the Feeding Stuffs Regulations (Northern Ireland) 2005<sup>(10)</sup>)**

7. Regulation 66 is revoked.

## **PART 3**

### **Amendment of Subordinate Legislation**

#### **Amendment of the Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002**

8.—(1) “The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002<sup>(11)</sup> shall be amended as follows.

(2) In regulation 33(6) for “20(1)” substitute “17(1)”.

#### **Amendment of the Pollution Prevention and Control Regulations (Northern Ireland) 2003**

9.—(1) “The Pollution Prevention and Control Regulations (Northern Ireland) 2003<sup>(12)</sup> shall be amended as follows.

(2) In regulation 12D—

- (a) in paragraph 5(b) for “pF” substitute “of”.
- (b) in paragraph 7 for “Annex IIIB” substitute “Annex IIB”.

#### **Amendment of the Waste Management Licensing Regulations (Northern Ireland) 2003**

10.—(1) The Waste Management Licensing Regulations (Northern Ireland) 2003<sup>(13)</sup> shall be amended as follows.

(2) In Schedule 3 paragraph 4(2) for “(f)” substitute “(e)”.

(3) In Schedule 4 paragraph 1(1) in the definition of “carrier” after “Regulation 6” insert “of”.

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<sup>(9)</sup> S.I. 1995/234 (N.I. as amended by S.R. 2003 No.493)

<sup>(10)</sup> S.R.2005 No. 545

<sup>(11)</sup> S.R.2002 No.271 as amended by S.R.2003 No.404

<sup>(12)</sup> S.R.2003 No.46 as amended by S.R.2003 No.390, S.R. No.496, S.I. 2003/3311. S.R. 2004 No.36, S.R.2004 No.507, S.R.2005 No.285, S.R. 2005 No.300, S.R. 2005 No.454, S.R.2006 No.98, S.R. 2006 No.280, S.R. 2007 No.245, S.I.2007/2325, S.R. 2009 No.159, S.R.2009 No.403 and S.R.2010 No.165

<sup>(13)</sup> S.R. 2003 No.493 as amended by S.R. 2003 No.496. S.R. 2005 No. 300, S.R. 2006 No. 280, S.R. 2006 No. 489, S.R. 2006 No 519, S.R. 2007 No.258, S.R. 2008 No. 18, S.R.2009 No.159, S.R. 2009 No.178 and S.R 2010 No.84

**Amendment of the Hazardous Waste Regulations (Northern Ireland) 2005**

**11.**—(1) The Hazardous Waste Regulations (Northern Ireland) 2005<sup>(14)</sup> shall be amended as follows.

(2) In Schedule 4 for paragraph 5 substitute “I certify that the information in A and B is correct and I confirm that I have fulfilled my duty to apply the waste hierarchy as required by regulation 17(1) of the Waste Regulations (Northern Ireland) 2011.

Sealed with the Official Seal of the Department of the Environment on ..... 2012.



*Wesley Shannon*

A senior officer of the Department of the Environment

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<sup>(14)</sup> S.R. 2005 No.300

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make corrections to The Waste Regulations (Northern Ireland) 2011 and revoke regulation 21 (Comingled waste).

## Annex B

### Interpreting “TEEP” and “Quality Standards”

1. Regulation 18 of the Waste Regulations (Northern Ireland) 2011 provides:

Duties in relation to collection of waste

*18.—(1) A district council, when collecting waste paper, metal, plastic or glass shall, from 1st January 2015, take all such measures to ensure separate collection of that waste as are available to it and are—*

*(a) technically, environmentally and economically practicable;*

*(b) appropriate to meet the necessary quality standards for the relevant recycling sectors.*

*(2) A district council, when making arrangements for the collection of waste paper, metal, plastic or glass, shall, from 1st January 2015, take measures to ensure that those arrangements are by way of separate collection.*

*(3) The duties under paragraphs (1) and (2) shall apply only where keeping waste separate facilitates or improves recovery*

2. In applying regulation 18 on the ground, it clearly becomes important to understand what is “*technically, environmentally and economically practicable*” (referred to as “TEEP” in the rest of this section) and what is “*necessary to meet the appropriate quality standards for the relevant recycling sectors*” (referred to as “quality standards” in the rest of this section). These are not established terms in EU legislation, therefore, some guidance is needed to interpret these terms.
3. To assist district councils and waste management companies in understanding the obligation placed upon them by regulation 18, and to provide a consistent basis for how they work with other actors in the recycling market, it is accepted that there is a need for greater clarity in relation to these terms.
4. The guidance that the European Commission is producing on the WFD is a starting point in this exercise. Publication of this guidance is expected shortly. It makes sense that guidance produced by the Department should be informed by that published by the European Commission in the interests of consistency and clarity. Consequently, guidance from the Department will issue following receipt and consideration of the Commission’s guidance.
5. In the meantime, it is recognised that many collection systems for waste are well established, subject to binding contracts and supported by considerable investment. In these circumstances it is possible that there will be an arguable case on economically practicable grounds not to adopt different collection systems prior to the termination of such contracts which may not be before 2015. However, as stated previously, it is for district councils and waste management companies

seeking to rely on this provision (TEEP and quality standards) to satisfy themselves that their collection systems are compliant with the requirements of the Directive.

### **Promoting High Quality Recycling and Quality Standards**

6. The Department intends to provide guidance on how best to promote high quality recycling as required by the Directive.
7. The general obligation in Article 11(1) of WFD to promote high quality recycling through separate collection has been transposed in the NI Regulations as a requirement of waste management plans. The Department is developing a programme of work to deliver improvements in the quality of recycling that will address this requirement as part of the Waste Management Strategy.
8. As in England and Wales, Northern Ireland is reliant in some areas on Materials Recovery Facilities (MRFs). In England and Wales, the Environmental Services Association has developed a MRF code of practice. Defra and the Welsh Assembly Government are currently considering making the code mandatory and will discuss a further draft of the code with key players in the supply chain (particularly re-processors and local authorities) over the coming months. The draft legislation which will make the code mandatory will be subject to a consultation, likely to take place later. The Department will follow progress on this closely and may consider adopting a similar approach.
9. The Department will also continue to promote better recycling through it's Rethink Waste programme.