EXPLANATORY MEMORANDUM TO

THE DIGITAL WASTE TRACKING (ENGLAND) REGULATIONS

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Mary Creagh MP, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Simon James, Director for Resources and Waste at the Department of Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Josh Nearney at the Department of Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: wastetracking@defra.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations establish an electronic (digital) system for tracking movements of controlled waste. The Regulations place mandatory requirements on operators of sites where controlled waste is received for management to record information about that waste and ensure that information is entered into the digital system using approved software.

4.2 The measures in these Regulations are aimed at reducing waste crime, providing a comprehensive data set for policy making and supporting the Government's ambitions for a circular economy.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdictions which this instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where this instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Over 200 million tonnes of waste is produced in the UK each year[1] but there is currently no single or comprehensive way of tracking it, with legislation relating to the transport, management and description of waste being introduced separately over the last 30 or so years.

5.2 There are different processes for different types of waste movements and large amounts of data recorded through these processes are either not collected or not collated centrally. As a result, it is very difficult; at a national level to determine where waste is being generated and what happens to it, and at a local level it is difficult for waste producers to check that their waste has been handled appropriately.

5.3 The lack of transparency within the current processes for recording information about waste movements provides opportunities for waste criminals to operate, undercutting legitimate waste businesses and causing harm to the environment and human health. Waste crime costs the UK economy an estimated £1 billion annually. Criminal activities include fly tipping, deliberate misclassification of waste, illegal waste exports and operation of illegal waste sites. The introduction of a digital system for recording information about waste movements will give the regulator (the Environment Agency) much needed oversight for compliance monitoring and make it much harder for rogue operators to compete in the industry. This will ensure greater protection of the environment by reducing illegal dumping, safeguard public health by ensuring that waste is properly managed and promote economic fairness by supporting compliant businesses.

5.4 Although waste is a devolved policy matter, all four governments across the UK have committed to the introduction of mandatory requirements to digitally track waste. Similar instruments to these Regulations will be made by Welsh Government, Scottish Government and the Department of Agriculture, Environment and Rural Affairs NI, which will provide cohesive digital waste tracking requirements across the UK.

5.5 To ensure the effective introduction of the digital system, all four governments across the UK are planning to implement mandatory requirements in phases. This instrument, which applies in England, is the first to be introduced, and introduces requirements on permitted operators -i.e. those who hold a permit to operate waste receiving sites only. A second phase will see the making of a further instrument that will impose mandatory requirements on other waste industry operators once the digital system is sufficiently developed. This second phase will see the digital tracking of waste movements from sites where the waste is produced through to waste receiving sites, including while the waste is in transport.

5.6 These Regulations designate the Secretary of State for Environment, Food and Rural Affairs to establish, maintain and operate the digital system.

5.7 These Regulations require operators of waste receiving sites to record information about the waste they receive and to enter that information into the digital system using software approved by the Secretary of State. The Regulations make provision for waste operators who are digitally excluded,[2] that is, a person whose religious or other beliefs is incompatible with using electronic equipment or for whom it is not reasonably practicable to use electronic communications or to keep electronic records for any reason (including age, disability or location). Such persons are exempt from the digital

[1] https://www.gov.uk/government/statistics/uk-waste-data

[2] See Section 34CA of the Environmental Protection Act 1990 for definition of "digitally excluded person".

requirements. Instead, a digitally excluded operator must comply with the alternative requirements set out in the Regulations, which include applying to the Environment Agency for a 'digitally excluded number', making and keeping written records about waste they receive and making these records available to the Environment Agency on request. Whilst the majority of waste operators are businesses with a legal personality, we consider that only waste operators who are natural persons (such as a sole trader) would be a digitally excluded person for the purposes of the Regulations as only a natural person could, for example, hold beliefs that are incompatible with using electronic equipment.

5.8 Waste operators who are required to use the digital system must pay an annual fee of £26. This fee will be used to recoup the costs of establishing, operating and maintaining the system. As digitally excluded operators are not using the digital system, they are not required to pay the fee.

5.9 These Regulations makes provision for new criminal offences and civil sanctions. The Regulations make it a criminal offence to fail to comply with any of the requirements (digital and alternative) in the Regulations apart from the requirement to pay the annual fee. Instead, a waste operator who fails to pay the fee will not be able to enter required information about waste they receive into the digital system, which is a criminal offence as well as a contravention for which a civil sanction can be imposed. Criminal sanctions are regarded as necessary so as to enable the Environment Agency to effectively punish repeat offenders, tackle more serious offending and to ensure that the new system is not undermined by unscrupulous operators.

What was the previous policy, how is this different?

5.10 Currently, permitted waste operators must provide a written description of the waste that must accompany the waste when being transferred. The written description must include information about the waste and the different parties involved in the waste movement. Copies of these written descriptions are shared and signed when the waste is passed between different operators in the chain including operators of waste receiving sites who are currently required to keep copies of these documents and submit the information recorded in them on a quarterly basis to the Environment Agency.

5.11 During phase 1, permitted operators of waste receiving sites will be required to keep and submit the written descriptions of the waste as well as make a digital record of specified information about that waste. The information in the digital waste record must be entered into the digital system within 2 working days beginning with the day after the day the waste is received by the operator.

6. Legislative and Legal Context

How has the law changed?

6.1 These are the first Regulations to be made under sections 34CA and 34CB of the Environmental Protection Act 1990 ("the 1990 Act"), which are new powers inserted into the 1990 Act by section 58 of the Environment Act 2021. These powers enable the Secretary of State to make provision for an electronic (digital) waste tracking system and related requirements.

6.2 The Regulations establish a new statutory framework for tracking controlled waste (defined in section 75 of the 1990 Act as household, industrial or commercial waste) in England through a Digital Waste Tracking System (DWTS).

6.3 Section 34CA(7) of the 1990 Act specifically provides a power to designate a person to establish, operate or maintain the system and confer functions on that person. Regulation 3 designates the Secretary of State as "the designated person" for those purposes and gives them key functions central to the operation of the DWTS, including;

- establishing, maintaining and operating the DWTS, and
- approving software.

6.4 The Regulations require operators of sites where controlled waste is received under a permit or licence granted under the Environmental Permitting (England and Wales) Regulations 2016 (defined in regulation 2 as an operator of a permitted facility) to enter specified information about that waste into the DWTS within prescribed deadlines.

6.5 The Regulations exempt digitally excluded persons (defined in section 34CA (12) of the 1990 Act) from the digital requirements in the Regulations in accordance with section 34CA (6) of the 1990 Act. Alternative requirements are instead imposed on such persons to make, keep and provide written records of specified information.

6.6 The Regulations make provision for outages, the correction of errors, the payment of a DWTS fee and place duties on the Environment Agency to monitor compliance and maintain a public register of enforcement action. Provision is also made to address cost recovery, penalties, appeals, and access to and the sharing of information. The Regulations do not affect current requirements on operators of a permitted facility (whether or not a digitally excluded person) to complete and keep written descriptions of waste that are currently required by section 34 of the 1990 Act to accompany the transfer of controlled waste (a waste transfer note under regulation 35 of the Waste (England and Wales) Regulation 2011) and the transfer of hazardous waste (a consignment note under the Hazardous Waste (England and Wales) Regulations 2005).

Why was this approach taken to change the law?

6.7 This instrument introduces a new, standalone statutory framework for the digital tracking of waste. It was not feasible to incorporate the changes made by this instrument—including provision for digital waste tracking, the designation of a responsible person, arrangements for digitally excluded persons, and strengthened enforcement powers—within the existing legislative framework.

7. Consultation

Summary of consultation outcome and methodology

7.1 A public consultation was held on behalf of the UK and Devolved Governments between 21 January and 15 April 2022. The consultation was aimed at those who would be required to enter information or draw information from the service, including businesses across all sectors, government, regulators, academia and the general public. In total 713 responses to the consultation were received.

7.2 There was broad support for the proposals with 79% of respondents agreeing to the waste types proposed to be tracked and 73% agreeing to the waste activities required to be subject to the tracking obligations.

7.3 All responses were considered in the development of the revised proposals set out in the joint UK Government response[3].

3 https://www.gov.uk/government/consultations/implementation-of-mandatory-digital-waste-tracking

7.4 As previously described this instrument is implementing the first phase of the introduction of mandatory digital waste tracking only. Consultation continues with stakeholders via user research and established industry working groups as the development of the digital service continues and this will inform future statutory instruments as requirements are expanded to other industry operators.

8. Applicable Guidance

8.1 Guidance for operators who are affected by this instrument will be published on gov.uk prior to the legislation coming into force. This guidance will be kept under review and updated when necessary.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A final stage Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. The Impact Assessment details the impact of the introduction of mandatory digital waste tracking as a whole and as such covers both this statutory instrument and future instruments to be laid to introduce the requirements for other waste operators. This approach has been agreed by the RPC.

Impact on businesses, charities and voluntary bodies

9.2 For businesses subject to these regulations, it is estimated that there will be transition costs to receiving sites of £1.53m over 4 years between 2026-2029. There will also be service fees of £16.73m and costs to obtain software of £38.99m, both over 15 years. These figures are marginal to the costs in the baseline option (mandatory tacking of just hazardous and POPs waste) and includes a 15% optimism bias. Once future instruments are laid to introduce requirements for other waste operators, businesses will benefit from no longer having to submit quarterly waste returns for permitted sites (£137m) and the reduction in waste crime (£462m); as illegal businesses leave the industry there will be reduced unfair competition and more waste (and therefore more revenue), for compliant operators. No specific impacts have been identified relating to charities or voluntary bodies as these organisations do not ordinarily operate waste management facilities.

9.3 The legislation does impact small or micro businesses.

9.4 Exempting small or micro businesses from complying with the requirements would undermine the objectives of the policy i.e. to digitally track all waste movements to provide better data and reduce waste crime.

9.5 The main impact on the public sector is the recovery of the cost of building and maintaining the Digital Waste Tracking service from users through a service charge (£16.73m). This creates a saving for government, as the costs that would otherwise fall to the public sector are instead funded by businesses. Once digital waste tracking is fully implemented There will be increased tax revenue to HMT via the reduction in waste crime of £456m over 15 years. All figures are in 2025 prices.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Environment Agency will be responsible for monitoring and enforcing the requirements of the Regulations. They will also provide Defra with regular reports on the use of the waste tracking information in their activities. Surveys and data collected on waste crime by the Environment Agency, or third parties may be used to assess the impact of the introduction of these requirements. As part of the continuing digital development and future planned expansion of the requirements to other waste operators, feedback on this legislation will be sought.

10.2 A statutory review clause is included in the instrument. The first review is due to be completed by 1 October 2031; thereafter reviews are to be conducted and published at intervals not exceeding 5 years.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 **Fees** – These Regulations make provision for a digital waste tracking system fee, which is payable only by waste operators who are required to use the digital waste tracking system. Waste operators who are digitally excluded persons are not required to pay the fee. There is no offence or sanction for the non-payment of the fee. Rather, the waste operator's ability to access the digital waste tracking system and discharge obligations imposed under the Regulations is contingent on the payment of the fee.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of The Digital Waste Tracking (England) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").