EXPLANATORY MEMORANDUM TO

THE SEPARATION OF WASTE (ENGLAND) (NO. 2) REGULATIONS 2024

2024 No. 000

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1 Robbie Moore MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Clare Delaney, Deputy Director for Resources and Waste, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Jessica Loring at the Department for the Environment, Food and Rural Affairs. Email: recycling@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument sets two exemptions made under section 45AZC of the Environmental Protection Act 1990 ("the Act"). This section creates powers to grant exemptions to the provisions of the Act that implement requirements for recyclable waste to be separately collected so that it can be recycled or composted.

4.2 The first exemption is an exemption from the requirements in the Act to collect the recyclable waste streams defined in sections 45A(10), 45AZA(10) and 45AZB(10) separately from each other except where sections 45A(6), 45AZA(6) or 45AZB(6) apply. This exemption allows English waste collection authorities and other waste collectors to collect the plastic, paper and card, glass and metal recyclable waste streams together in all circumstances and not just where an exception applies. The exemption also allows English waste collection authorities and other waste collectors to collect the food waste and garden waste recyclable waste streams together in all circumstances and not just where an exception applies.

4.3 The second exemption is an exemption for existing micro-firms from the application of any of the requirements in sections 45AZA and 45AZB of the Act until 31st March 2027. A micro-firm is any entity carrying out an activity or enterprise, whether or not for a profit, which operates out of a premises to which section 45AZA or section

45AZB of the Act would apply, which has fewer than 10 full time equivalent employees.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

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

5. Policy Context

What is being done and why?

5.1 The first exemption allows English waste collection authorities, and other waste collectors, to collect the plastic, paper and card, glass and metal recyclable waste streams together in one bin, in all circumstances. The exemption also allows English waste collection authorities to collect the food and garden waste streams together in one bin, in all circumstances. This exemption will ensure that local authorities retain flexibility to provide the most appropriate waste services according to local need, and avoid a proliferation of different bins in premises and on streets.

5.2 The Secretary of State may set an exemption from the requirement to separately collect in relation to two or more recyclable waste streams only if satisfied it does not significantly reduce the potential for the materials in those waste streams to be recycled or composted. The Secretary of State is satisfied that plastic, paper and card, glass and metal can be collected together without a significant impact on the ability of the materials to be recycled. Although there is some evidence that collecting plastic, paper and card, glass and metal together can increase contamination of recycling (with non-recyclable materials, food or liquid), the Secretary of State is satisfied that this impact is not significant, and that the Collection and Packaging Reforms will support behaviour change to reduce contamination rates and better preserve material value.

5.3 Simpler Recycling in England will make recycling clearer and easier, as people will no longer need to check what their specific council will accept for recycling. As part of Extended Producer Responsibility (EPR) for packaging, producers will be required to label packaging to state whether it is recyclable or not. This will help reduce confusion and support the Simpler Recycling measures to ensure the correct materials are captured for recycling. The Secretary of State is therefore satisfied that co-collection of dry recyclable materials will not significantly reduce their potential to be recycled, so long as dry recycling is collected separately from residual and organic waste.

5.4 The Secretary of State is also satisfied that food and garden waste can be collected together without a significant impact on the ability of the materials to be recycled. Food and garden waste can be composted together.

5.5 The second exemption is an exemption for existing micro-firms from the application of section 45AZA and AZB of the Act until 31st March 2027 (see section 2.3 for the definition of micro-firm). Due to transitional arrangements in the Commencement Regulations, the requirements in sections 45AZA and 45AZB will only come into force on 31 March 2025. This gives two additional years for micro-firms to implement procedures to comply with the new requirements.

5.6 This short-term exemption is being given to businesses which meet the definition of micro-firm on 31st March 2025, the date on which the requirements come into force,

in acknowledgement of the financial and capacity challenges that some micro-firms may face. The full-time equivalent employee number is linked to the size of the business entity and not the size of the local unit to ensure that larger businesses with many smaller premises are not caught by the exemption. This two-year exemption will allow micro-firms to access business support tools and implement changes in the most cost-effective manner. New micro-firms that are established after 31st March 2025 will not receive an exemption, and therefore are required to comply with new requirements immediately. This is because it will be more efficient for new micro-firms to introduce compliant services rather than changing services shortly after implementation.

What was the previous policy, how is this different?

5.7 Without the first exemption, waste collectors would only be able to collect recyclable waste streams together if it was technically or economically practicable or there was no significant environmental benefit to separate collection. If they sought to rely on one of these exceptions, they would be required to carry out a written assessment setting out why the exception applies. Setting an exemption will reduce the burden on waste collection authorities and other waste collectors to produce written assessments. It will likely also reduce the number of bins that householders, relevant non-domestic premises that produce household waste, and premises producing relevant waste, are required to have.

5.8 Without the second exemption, all micro-firms would be in scope of new recycling requirements from 31 March 2025, in line with larger businesses and relevant non-domestic premises in scope of the new requirements. This would incur greater costs for micro-firms.

6. Legislative and Legal Context

How has the law changed?

6.1 The regulations are being made under the powers set out in section 45AZC of the Act.

6.2 Section 57(4) of the Environment Act 2021 substituted old section 45A of the Act for new sections 45A to 45AZG of the Act. These provisions set out new requirements for the separate collection of recyclable waste from households, relevant non-domestic premises producing household waste and premises producing relevant waste such as businesses. Relevant waste is industrial or commercial waste, which is similar in nature and composition to household waste.

6.3 Due to transitional arrangements in the commencement regulations, the requirements in sections 45AZA and 45AZB will only have effect from 31st March 2025 and the requirements in section 45A will only have effect from 31st March 2026. These regulations will ensure that the exemptions are in place as soon as the requirements take effect so that English waste collection authorities and other waste collectors, as well as businesses, can plan for their implementation.

Why was this approach taken to change the law?

6.4 Implementing these exemptions reduces the new regulatory burden on micro-firms and waste collectors, including English waste collection authorities. This reduction cannot be achieved without granting these exemptions to the requirements in the primary legislation.

7. Consultation

Summary of consultation outcome and methodology

7.1 Defra held a public consultation on Consistency in Household and Business Recycling in England in 2021, closing on 4 July 2021. This included consultation on the two-years micro-firm exemption. Overall, 896 consultation responses were received. The Government response[1] to the consultation was published on 21 October 2023.

7.2 For the micro-firm exemption, the respondents' overall preferred option was for micro-firms to be required to comply with the new requirements at the same date as other relevant non-domestic premises producing household waste and producers of relevant waste ("non-household municipal premises") (58% of 489 responses). Providing a two-year exemption was the second most popular option (32% of 489 responses). A minority of respondents (10%) thought all micro-firms should be permanently exempt from the requirement. Impact assessment modelling indicates that phasing micro-firms in contributes a significant proportion of total increases in recycling rates and carbon savings, as micro-firms constitute approximately 90% of total non-household municipal premises.

7.3 Although most stakeholders favoured the inclusion of micro-firms from the same date as all other non-household municipal premises, we are giving them a short-term exemption of two years. This is to reflect the barriers that existing micro-firms face to meeting requirements, particularly the cost impact relative to turnover that micro-firms will face, their recovery from the Covid-19 pandemic and increased energy and supply chain costs.

7.4 In 2023, Defra held an additional, targeted consultation on the exemptions to allow co-collection of recyclable waste streams. This closed on 20 November 2023. Defra consulted all English Waste Collection and Disposal Authorities and the Environment Agency. Defra also engaged with key membership organisations across the waste sector during the consultation period. Defra also received feedback from a range of stakeholders, including packaging producers, material producers, reprocessors and environmental non-governmental organisations (eNGOs). There were 202 respondents to the consultation. The Government response[2] to the consultation was published on 9 May 2024.

7.5 76% of consultation respondents agreed with the proposed exemption to allow co-collection of all dry recyclable waste streams in all circumstances, while 17% disagreed, 6% were unsure and 2% did not respond. 62% of respondents agreed with the proposed exemption to allow co-collection of food and garden waste in all circumstances, while 18% disagreed, 14% were unsure, and 5% did not give an answer.

8. Applicable Guidance

8.1 Guidance will be issued under section 45AZE of the Act, which will provide guidance on the duties imposed by sections 45-45AZD of the Act. This guidance will be

[1] Government response to the public consultation on Consistency in Household and Business Recycling in England: https://www.gov.uk/government/consultations/consistency-in-household-and-business-recycling-in-england/outcome/government-response.

[2] Government response to the targeted consultation on the exemptions to allow co-collection of recyclable waste streams: https://www.gov.uk/government/consultations/exemptions-and-statutory-guidance-for-simpler-recycling-in-england.

available on gov.uk as soon as possible after the Parliamentary process has been completed.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact of these regulations on businesses, charities or voluntary bodies is to lessen the burden of new recycling requirements. The exemption to allow co-collection of dry recycling waste streams will ensure businesses, charities and voluntary bodies can choose the most cost-effective service for their circumstances. This exemption will also reduce the administrative burden on commercial waste collectors to produce written assessments, which are needed to co-collect waste streams if the exemption is not provided. The two-year exemption for micro-firms will support small businesses, charities and voluntary bodies to implement new recycling requirements in the most cost-effective manner.

9.3 The primary legislation will impact small or micro businesses when the new requirements for waste collection come into effect. To reduce the impact of the requirements, the exemption has been provided to allow two additional years for micro-firms (with fewer than 10 full-time equivalent staff) to comply with recycling requirements. The Impact Assessment shows that businesses will experience relatively minor familiarisation costs, but variable waste management costs. For non-micro businesses, our reforms will lead to a total average saving of £93m pa. Micro-firms will face an estimated waste management cost increase of £278 pa per firm but not until 2027, to allow them to access business support tools and implement changes in the most cost-effective manner. Including micro-firms in scope of requirements from 2027, rather than a permanent exemption, is expected to increase the recycling rate for the non-household municipal sector by 9.3 percentage points, as well as increasing our carbon savings by £3.1-3.2bn (discounted) across the impact assessment appraisal period.

9.4 The impact on the public sector is to lessen the burden of new recycling requirements. The exemption to allow co-collection of dry recycling waste streams will reduce costs and the administrative burden of the requirement of English waste collection authorities to produce a written assessment, which are needed to co-collect waste streams if this exemption is not provided. The two-year exemption for micro-firms will support any small non-domestic premises to implement new recycling requirements in the most cost-effective manner.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Ipsos, in partnership with Ricardo and Technopolis, has been commissioned to carry out an evaluation of Defra's Resources & Waste strategy (including the Consistency in Recycling policies) over a five-year period starting in February 2022. The evaluation will, amongst other things, focus on the primary objectives of the Simpler Recycling policy, which include increasing the quantity of recycled material by

increasing the rate of recycling in England and improving the quality of recycling material in England.

10.2 As part of the evaluation process, indicators will be developed, and data sources will be identified to evaluate the policy once it is implemented.

10.3 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Robbie Moore, Parliamentary Under-Secretary of State at Defra, has made the following statement regarding Human Rights:

"In my view the provisions of the Separation of Waste (England) (No. 2) Regulations 2024 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").