EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (WASTE CONTROLLING OR TRANSPORTING) AND RELEVANT FUNCTIONS OF PRIMARY AUTHORITIES (AMENDMENT) (ENGLAND) REGULATIONS 2026

2026 No. 873

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 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 James Cruddas, Deputy Director for Waste and Recycling at the Department of Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 David Read and Freya Ballard at the Department of Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: waste.regulationandcrime@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 amend the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) ("EPR 2016") to establish a new regulatory framework for people and businesses involved in transporting and managing waste.

4.2 The Regulations replace the carrier, broker and dealer (CBD) registration system with a permitting regime in England.

4.3 The regulations introduce three new categories of regulated facility under EPR 2016: waste controlling activities; waste transporting activities; and waste controlling-transporting activities, as well as exempt waste controlling or transporting activities.

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 primarily England. However, there are amendments to the Control of Pollution (Amendment) Act 1989 ("CP(A)A 1989") which are consequential to

those England only reforms. These apply to England and Wales and maintain the existing registration regime in relation to Wales.

5. Policy Context

What is being done and why?

5.1 The current system for regulating people and businesses who transport or make decisions about waste is based on a simple registration system introduced by the CP(A)A 1989. While this model provides a basic level of oversight, it has not kept pace with changes in the waste sector or developments in waste crime. The current system allows operators to enter the sector with light touch checks, provides limited tools for regulators to act against non-compliant or criminal behaviour, and does not distinguish between high and low-risk activities. These weaknesses contribute to waste crime, which imposes substantial financial and environmental harms and undermines legitimate operators.

5.2 Government intervention is needed because the current framework does not provide proportionate, risk-based regulation of those who control or transport waste. Registration alone does not ensure that operators are competent or that they can be held accountable for the decisions they make about waste. Regulators lack the ability to prevent unsuitable operators from entering the sector, and enforcement activity is often reactive rather than preventative. Reform is required to ensure that waste is managed safely and responsibly, and to reduce the opportunities for criminal activity within the waste chain.

5.3 These Regulations replace the existing registration system with a permitting regime under the EPR 2016. Environmental permitting provides a more robust and flexible regulatory framework, enabling the Environment Agency to carry out checks before granting permits, set standard rules requiring ongoing technical competence, refuse applications where appropriate, and take proportionate enforcement action where standards are not met. The new system introduces three types of regulated activity (waste controlling, waste transporting and waste controlling-transporting) to reflect the different roles that operators perform in the waste chain and to ensure that regulatory controls are applied appropriately.

5.4 To ensure the framework is proportionate, the Regulations also introduce a number of exemptions for low-risk activities in line with the wider EPR 2016 framework, including businesses transporting only their own waste, charities providing free services, and operators handling certain types of waste such as extractive waste or returnable deposit scheme items. These exemptions include conditions that maintain environmental protections while reducing burdens for operators who pose limited risk.

5.5 The Regulations also clarify when an operator falls within English permitting requirements through transparent territorial tests. Those whose registered office or principal place of business is in England and those whose registered office or principal place of business is based outside of England but undertake controlling or transporting activities within England will fall within English permitting requirements. These criteria provide clarity for businesses operating across borders and ensure consistent oversight of waste movements that take place in England.

5.6 This reform supports wider Government commitments to crack down on waste crime, improve the traceability of waste, and modernise regulatory systems across the sector. It aligns with the development of the digital waste tracking service, which will provide real-time information on the movement of waste and strengthen the ability of

regulators to monitor compliance. Together, these measures form a key component of the Government's approach to improving resource efficiency, supporting a circular economy and reducing environmental damage caused by waste crime.

5.7 The Regulations include a provision in Part 5 that brings the Environment Act 2021 into the scope of Primary Authority by adding it to Schedule 3 of The Regulatory Enforcement and Sanction Act 2008 ("RESA 2008"). Primary Authority is a means for businesses to receive assured and tailored advice on meeting regulations such as environmental health, trading standards or fire safety through a single point of contact. This amendment will enable primary authorities to play a role in effectively supporting retailers in undertaking their obligations required in the Deposit Return Scheme (DRS).

What was the previous policy, how is this different?

5.8 Previously, anyone who controlled or transported waste was required to register with the Environment Agency under a simple two-tier registration system.

5.9 This system involved light touch checks, provided no assessment of technical competence, and gave regulators limited grounds to refuse, revoke or prevent registrations, even where operators pose environmental or compliance risks. It also did not distinguish between activities with different levels of responsibility or risk.

5.10 The regulations replace this registration model with a permitting framework under the EPR 2016, ensuring that operators are subject to proportionate scrutiny before entering the sector and must maintain competence over time. It introduces three distinct categories of regulated activity to reflect the different roles within in the sector and provides a set of exemptions for low-risk activities. The new system delivers a more robust, risk-based approach to regulating those who are involved in transporting and managing waste

6. Legislative and Legal Context

How has the law changed?

6.1 The Regulations are made under section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999 and sections 4(4)(a) and 5 of the Regulatory Enforcement and Sanctions Act 2008.

6.2 The instrument amends the EPR 2016 to bring specified waste controlling and transporting activities within the environmental permitting framework in England. It does this by inserting new definitions and creating a new Schedule 25D which defines those activities and sets out operator eligibility. It also makes provision for an exemptions regime, including a new Part 6 of Schedule 3.

6.3 Further amendments ensure that the existing permitting, registration and enforcement provisions in the EPR 2016 apply appropriately in relation to these activities, including transitional provision for existing registered carriers, brokers and dealers.

6.4 Consequential amendments are made to the Environmental Protection Act 1990 ("EPA 1990") to ensure that existing enforcement powers and offence provisions operate effectively in relation to these activities, including provision enabling regulators to require information relevant to compliance. Amendments are also made to the Environment Act 1995 ("EA 1995") to provide for the application of the existing charging framework in relation to these activities.

6.5 The CP(A)A 1989 and related legislation, including the Waste (England and Wales) Regulations 2011, are amended so that the existing carrier, broker and dealer registration regime no longer applies in England but continues to apply in relation to Wales.

6.6 The instrument also amends RESA 2008 to bring the Environment Act 2021 within the scope of the Primary Authority scheme in England.

6.7 Regulation 1 and regulations 2, 27, 28, 29, 30 and 31 come into force 21 days after the instrument is made; all other provisions come into force 12 months later.

Why was this approach taken to change the law?

6.8 The Government has taken this approach because the existing registration system for waste carriers, brokers and dealers does not provide the level of assurance needed to prevent waste crime or ensure that waste is managed responsibly. Registration alone does not allow the regulator to assess an operator's competence, check their compliance history, or refuse access to the sector where there is evidence of risk. A permit-based model under the EPR 2016 offers a more effective and proportionate way to regulate these activities, as it allows for pre-entry checks, clearer conditions, the ability for the Environment Agency to set standard rules and stronger enforcement tools, while maintaining flexibility through exemptions for low-risk operators. Embedding the new framework within the existing permitting system also avoids creating a parallel regime and ensures a single, coherent approach to waste regulation.

6.9 This legislative change is needed because only amendments to the underlying regulatory framework can give the regulator the powers and tools required to properly identify problems and address them.

6.10 The Environment Agency will have powers to introduce mandatory technical competence requirements when setting standard permit rules, which will ensure that businesses handling waste meet a consistent standard. These powers will allow the Environment Agency to set such and change such conditions with some flexibility. This approach was strongly supported by industry engagement and is considered the most effective and targeted way to reduce waste crime, protect compliant operators, and raise competence across the sector.

6.11 With regards to the Primary Authority provisions, there is a clear benefit to retailers being able to use Primary Authorities when undertaking their DRS obligations by receiving clear and tailored advice. It is therefore deemed appropriate to take this approach to enable the effective delivery of the scheme.

7. Consultation

Summary of consultation outcome and methodology

7.1 A public consultation was held between 21st January and 15th April 2022. In total 426 responses to the consultation were received. The majority of these responses were from businesses that handle or manage waste

7.2 There was broad support for the proposal to move from registration to permitting, with 73% of respondents agreeing that the current CBD regime should be brought under EPR 2016.

7.3 Defra has worked with officials from the devolved governments and their regulators to assess options to mitigate any risks arising from a differential approach across UK

nations, ensuring operators register with the correct authority and to prevent the intentional exploitation of this system.

7.4 All responses were considered in the development of proposals for reform. A Government response was published in October 2023, and a policy paper was published in August 2025. A copy of the full summary of responses and the UK Government's response can be found[1] and the 2025 policy paper can be found.[2]

8. Applicable Guidance

8.1 Defra will publish core guidance for controllers and transporters on gov.uk ahead of commencement, to be read alongside the Environmental Permitting[3].

8.2 The Environment Agency will publish updated guidance on permit applications, and exemptions before commencement.

8.3 Guidance may be published by the Deposit Management Organisation, the Environment Agency, Trading Standards and Defra as part of the delivery of the DRS.

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.

9.2 A separate Impact Assessment has already been published for the DRS.

Impact on businesses, charities and voluntary bodies

9.3 For businesses subject to these regulations, it is estimated there will be permit fees (£186.9m over the 11 year appraisal period) or exemption registration fees (£15.4m). Businesses will face time costs associated with familiarisation (£50.6m), applying for permits (£11.9m), registering exemptions (£2.3m) and complying with audits (£28.8m). Businesses will also incur costs from increased tax (businesses that are brought into compliance will begin paying tax) (£183.8m). Permitted businesses will face technical competence costs (£48.2m), permit holder training costs (£50.5m) and costs from other relevant individuals training (£91.6m). Businesses will benefit from reduced waste crime (£159.2m).

9.4 The legislation does impact small and micro businesses.

9.5 Exempting small or micro businesses from complying with the requirements solely on business size or offering a voluntary/opt-in approach based solely on business size, would undermine the policy and its risk-based approach. Some small/micro businesses will pose a significant waste crime risk and should therefore be subject to an appropriate level of regulation; to exempt these businesses would risk the waste crime reduction benefits from this policy.

9.6 The impact on the public sector is the Environment Agency will face transition costs associated with new IT (£5.7m over the 11 year appraisal period), a communication campaign (£0.1m), recruitment costs (£0.3m) and familiarisation costs (£0.01m), and face increased enforcement costs (£22.1m). The public sector will benefit from reduced waste crime (£183.8m). There will also be societal and environmental

[1] https://www.gov.uk/government/consultations/waste-carrier-broker-and-dealer-system-reform
[2] https://www.gov.uk/government/publications/reforming-the-waste-carrier-broker-and-dealer-system
[3] https://www.gov.uk/government/publications/environmental-permitting-guidance-core-guidance--2

benefits from reduced waste crime (£14.5m). The Environment Agency may benefit from efficiency savings – for example, they will have improved access to information which could enable more effective compliance monitoring and enforcement activities. There will also be significant environmental and societal benefits, beyond the monetised waste crime reduction benefits.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This policy will be evaluated as part of Defra's Resources and Waste Policy Programme Evaluation, an independent, externally commissioned programme which assesses the impact of major waste and recycling reforms which is due to report in March 2029. The impact evaluation will review how this policy contributes to the wider objective of reducing waste crime, alongside other measures such as digital waste tracking. Indicators relevant to this policy include changes in the information available to regulators, levels of reported waste crime, and stakeholder perceptions of the effectiveness of regulatory controls and the fairness of the waste management sector.

10.2 The evaluation will conduct a process evaluation of this policy, carried out after implementation, to provide early feedback on whether the policy is operating as intended and to identify any areas where delivery or design could be adjusted.

10.3 The instrument does not include a statutory review clause. The policy sits within a wider, long term programme of waste reforms that are already subject to structured evaluation and ongoing monitoring. In addition, the policy will be subject to a Post Implementation Review, which will assess whether the regulations are operating as intended and whether any changes are needed.

10.4 With regards to the DRS, the relevant legislation already contains a statutory review clause requiring the Secretary of State to carry out a review of the provisions contained in those regulations, setting out the conclusions in a published report within 5 years of the commencement of the scheme on 1 October 2027, and at subsequent intervals not exceeding 5 years.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument amends primary legislation. The CP(A)A 1989, EPA 1990 and EA 1995 are amended so that the existing carrier, broker and dealer registration regime no longer applies in England but continues to apply in relation to Wales. RESA 2018 is amended to bring the Environment Act 2021 within the scope of the Primary Authority scheme in England.

11.2 Regulation 22 introduces requirements for drivers that transport waste to carry specified information the enforcement of which relies on existing powers outside the EPR 2016.

12. European Convention on Human Rights

12.1 Mary Creagh MP, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:
"In my view the provisions of The Environmental Permitting (Waste Controlling or

Transporting) and Relevant Functions of Primary Authorities (Amendment) (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").