EXPLANATORY MEMORANDUM TO

THE SEPARATION OF WASTE (ENGLAND) REGULATIONS 2024

2024 No. 666

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 a description of the recyclable household waste and the recyclable relevant waste that will be in each recyclable waste stream for the purposes of sections 45A(10), 45AZA(10) and 45AZB(10) of the Environmental Protection Act 1990 ("the Act") as amended by the Environment Act 2021. This will ensure that a consistent set of recyclable materials is collected for recycling or composting from households, relevant non-domestic premises (such as schools and hospitals) and producers of relevant waste in England. Relevant waste is industrial or commercial waste, which is similar in nature and composition to household waste.

4.2 This instrument also designates several additional premises as relevant non-domestic premises, which are in scope of section 45AZA of the Act. This includes: places of worship, penal institutions, charity shops, residential hostels, and premises used wholly or mainly for public meetings.

4.3 This instrument also amends the Waste (England and Wales) Regulations 2011, as they apply to England, in order to omit regulation 13. This regulation is no longer required as a consequence of the amendments to the Act made by the Environment Act 2021, which introduce more stringent requirements regarding the separate collection of waste.

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 Act sets out six recyclable waste streams to be separately collected: plastic, paper and card, glass, metal, food waste and garden waste. Waste collection authorities are required to collect all six recyclable waste streams separately from residual ('black bin-bag') waste from all households. Relevant non-domestic premises (such as schools and hospitals) and producers of relevant waste (such as businesses) must make arrangements for the separate collection of five recyclable waste streams, all except for garden waste, and they must present this waste in accordance with the waste collection arrangements.

5.2 Under the Act, it is for the Secretary of State to set out in regulations a description of the recyclable waste in each recyclable waste stream, to ensure that the same materials are collected from all households, all relevant non-domestic premises and all premises producing relevant waste. This instrument sets the descriptions of the recyclable waste to be collected in the six recyclable waste streams: plastic, paper and card, glass, metal, food waste and garden waste. The government will work with the sector to ensure that what goes in each waste stream is clearly and effectively communicated to the public.

5.3 Additionally, under the Act, "relevant non-domestic premises" means a residential home, premises forming part of a university or school or other educational establishment, premises forming part of a hospital or nursing home, and premises of a description specified in regulations made by the Secretary of State. This instrument sets a description of relevant non-domestic premises in regulations to additionally designate the following premises as relevant non-domestic premises: places of worship, penal institutions, charity shops, residential hostels and premises used wholly or mainly for public meetings. This means that these premises are in scope of section 45AZA of the Act. Therefore, people arranging for the collection of waste from these premises must arrange for the separate collection of the recyclable waste streams, in accordance with the Act.

5.4 Until these non-domestic premises are listed as relevant non-domestic premises in regulations, these premises are not required to arrange for the separate collection of recyclable household waste in accordance with section 45AZA of the Act. The premises included are the same premises currently classified in the Controlled Waste (England and Wales) Regulations 2012 as producers of household waste, and English waste collection authorities therefore already have a duty to arrange waste collection from these premises if requested.

5.5 This instrument also amends the Waste (England and Wales) Regulations 2011, so that regulation 13 will no longer apply in relation to England. Regulation 13 creates a requirement for waste collectors to collect paper, metal, plastic and glass separately, unless certain conditions apply, for instance if it does not deliver the best environmental outcome, or it is not technically feasible. This regulation is no longer

necessary as a consequence of the more stringent requirements in section 45A of the Act as amended.

What was the previous policy, how is this different?

5.6 Before the amendments made to the Act by the Environment Act 2021, section 45A of the Environmental Protection Act 1990 required English waste collection authorities to collect at least two types of recyclable waste separately from residual waste, unless the cost of doing so is unreasonably high or alternative arrangements are available. Additionally, regulation 13 of the Waste (England & Wales) Regulations 2011 required that all waste collectors must collect paper, metal, plastic and glass separately unless certain conditions apply. However, there was no legal definition of paper, metal, plastic and glass, which led to inconsistent collections across England, causing confusion as different councils would collect different materials.

5.7 The amendments to the Act require English waste collection authorities to collect plastic, paper and card, glass and metal separately from residual waste, weekly food waste, and garden waste (where requested), from households. Relevant non-domestic premises (such as schools and hospitals) and producers of relevant waste (such as businesses) in England must arrange for collection of the same, bar garden waste.

5.8 This instrument is a necessary supplement to the amended legislation to set out what materials are included in each of the recyclable waste streams, and therefore must be collected for recycling or composting from the relevant premises. This will ensure consistency in what materials are collected for recycling or composting throughout England.

6. Legislative and Legal Context

How has the law changed?

6.1 The regulations are being made under the powers set out in sections 45A(9), 45AZA(9), 45AZA(11) and 45AZB(9) of the Act, except for the consequential amendment to the Waste (England and Wales) Regulations 2011, which is being made under section 142(1) of the Environment Act 2021. 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.

6.2 This instrument supplements the Act by setting descriptions of the recyclable waste streams, to confirm what should be collected in recycling collections. 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 English waste collection authorities and other waste collectors, as well as businesses and households, are aware in advance of what materials must be separately collected under the new requirements and can plan for their implementation.

Why was this approach taken to change the law?

6.3 These Regulations are necessary to supplement the primary legislation by providing necessary detail on what materials must be separately collected. Without them, the separate collection requirements in the Act will have no practical effect.

7. Consultation

Summary of consultation outcome and methodology

7.1 The consultation on Consistency in Household and Business Recycling in England lasted for 8 weeks and ran from 7 May 2021 to 4 July 2021. Following on from an initial consultation in 2019, this consultation detailed specific policy proposals for increasing consistency in recycling collected from households, businesses and other organisations. The purpose of the consultation was to seek views on the detailed policies relating to the implementation of the new requirements in the Act relating to consistency in recycling including the materials to be included in the recyclable waste streams, exemptions, statutory guidance and dates by which the new requirements should be implemented by.

7.2 Overall 896 responses were received. The majority of respondents (between 75% and 95%, dependent on the material) agreed that the proposed materials should be collected within the proposed timescales. Having considered the responses, we set out a more detailed list of materials to be part of each waste stream to ensure that we were not requiring waste collectors to collect any materials that are not widely recycled. The Government response[1] to the consultation was published on 21 October 2023.

7.3 Following this, the government held a public consultation on additional policies related to Simpler Recycling in England. This consultation lasted for 4 weeks and ran from 21 October 2023 to 20 November 2023. This included consultation on the proposed inclusion of the additional relevant non-domestic premises introduced in this instrument.

7.4 Overall 146 responses were received. The majority of respondents (between 79%-86% dependent on the premises type) agreed with the proposal to designate the premises as a relevant non-domestic premises for the separate collection of waste. The Government response[2] to the consultation was published on 9 May 2024.

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 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.

[1] https://www.gov.uk/government/consultations/consistency-in-household-and-business-recycling-in-england/outcome/government-response
[2] https://www.gov.uk/government/consultations/simpler-recycling-in-england-additional-policies

Impact on businesses, charities and voluntary bodies

9.2 Businesses, charities or voluntary bodies that produce household waste or relevant waste will be required to arrange for the collection of a consistent set of recyclable materials for recycling or composting. These Regulations provide the detail of what materials must be collected for recycling and composting.

9.3 The Act, as supplemented by these Regulations, will impact small or micro businesses. To minimise the impact of the requirements, an 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 are estimated to lead to a total saving of £430m across the impact assessment appraisal period, which is 2024-2035. 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 Public sector organisations that produce relevant waste will be required to ensure their waste collection arrangements comply with the new requirements and present the materials prescribed in the Regulations for recycling or composting in accordance with those arrangements. Public sector organisations that collect household waste or relevant waste (in particular, English waste collection authorities) will be required to separately collect recyclable materials in accordance with the new requirements.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This instrument can be updated as necessary in future, recognising the continuous improvement in the design of products and packaging or advancement in sorting and recycling technologies. This approach will ensure that as much recyclable material as possible can be captured within the recyclable waste streams.

10.2 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 The Rt Hon Steve Barclay MP has made the following statement regarding Human Rights:

"In my view the provisions of the Separation of Waste (England) 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").