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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Increasing Business Recycling in Wales

Proposals for Statutory Instruments under Part IV of the Environment
(Wales) Act 2016 and the Waste (Wales) Measure 2010

Date of issue: 23 September 2019
Action required: Responses by 13 December 2019

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This Wales only consultation sets out proposals for statutory instruments (SIs) to increase recycling from non-domestic premises such as businesses, public sector bodies and other premises.

The SIs will be brought under Part IV of the Environment (Wales) Act 2016 and the Waste (Wales) Measure 2010.

How to respond

This consultation will run for 12 weeks from 23 September to 13 December. Please respond to this consultation by email or in writing answering the questions listed at Annex A to this document and send them to:

By email to:

ResourceEfficiencyAndCircularEconomy@gov.wales

In writing to:

Waste and Resource Efficiency Division
Welsh Government
Crown Buildings
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Eunomia Research and Consulting (2019) Regulatory Impact of Statutory Instruments
<https://gov.wales/consultations>

Welsh Government (2019) Draft Regulatory Impact Assessment – SIs to be brought under Part IV of the Environment (Wales) Act 2016 and the Waste (Wales) Measure 2010 <https://gov.wales/consultations>

Contact details

For further information:

ResourceEfficiencyAndCircularEconomy@gov.wales

Waste and Resource Efficiency Division
Welsh Government
Crown Buildings
Cardiff
CF10 3NQ

General Data Protection Regulation (GDPR)

The Welsh Government will be the data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk/>

e-mail:

Data.ProtectionOfficer@gov.wales

Introduction

This consultation sets out proposals to bring forward statutory instruments (SIs) to increase recycling from non-domestic premises such as businesses and the public sector in Wales.

The SIs will be brought in under powers conferred on the Welsh Ministers by Part IV of the Environment (Wales) Act 2016, the Waste (Wales) Measure 2010 and Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (with respect to civil sanctions).

The SIs will:

- Require the occupiers of non-domestic premises (such as businesses, charities and public sector bodies) to present specified recyclable materials for collection separately from each other and from residual waste;
- Require those that collect the materials to collect them by means of separate collection and to keep them separate;
- Ban certain separately collected recyclable materials from incineration and landfill;
- Commence a ban on disposal of food waste to sewer from business premises;
- Provide for civil sanctions to be available in relation to criminal offences associated with the above requirements.

Background

The Welsh Government's targets for the recycling of waste are 70% recycling by 2025 for waste from households and commercial and industrial businesses and 90% by 2019/20 for waste from construction and demolition activities.

Meeting these targets will support Wales' progress towards a circular economy, where resources are kept in use for as long as possible and products and materials are recovered and regenerated at the end of each product's life.

This has positive benefits for the economy, jobs and the environment and will:

- Save costs to businesses through avoided landfill tax
- Increase business competitiveness by reducing material costs
- Create jobs in the waste management sector
- Give greater security of supply of resources to our manufacturing sector
- Help accelerate progress towards a circular economy for Wales through the use by Welsh manufacturing businesses of recyclate collected in Wales
- Reduce greenhouse gas emissions
- Reduce pollution in Wales

In order to maintain a high resource value, it is important that recyclable materials are kept separate from other wastes at source. This supports market demand for high quality and high value recyclate, which in turn acts as a further stimulus to recycling rates. Higher quality recyclate is also more likely to be used in manufacturing

operations than lower quality recyclate. Producing high quality recyclate in Wales also reduces the likelihood of materials being sent overseas for treatment.

Recycling and recovery of high quality materials also helps address the growing concern over the increasing global demand for resources. By using resources more efficiently through waste prevention and high reuse and recycling rates, material security is improved and dependence on primary resources (whether from inside or outside the UK) is reduced.

Considerable progress has been made with recycling in Wales, particularly from households. However, at non-domestic premises, such as businesses and in the public sector, significant amounts of recyclable materials are still disposed of as a part of the residual waste stream or co-mingled with other recyclable wastes. This reduces the recyclate capture and value and prevents their use as a high quality source of input material to industry.

The Environment (Wales) Act 2016 and the Wales (Waste) Measure 2010

The Welsh Government has previously consulted on options to improve recycling from business premises¹. As part of the earlier consultation the Government undertook a comprehensive stakeholder engagement process. After considering the responses² to the consultation provision was made in the Environment (Wales) Act 2016 (“the Act”) for the Welsh Ministers to bring forward proposals to:

- require business waste producers (including the public sector) to present their wastes separately for collection
- require business wastes to be collected by means of separate collection
- ban specified materials to incineration

The Act also bans (subject to Commencement Order) the disposal of commercial food waste to sewer.

These powers are supplemented by the existing power for Welsh Ministers to ban specified materials to landfill provided by the Waste (Wales) Measure 2010.

This consultation is seeking views on the regulations that we propose to introduce under the above powers.

Transposition of the European Union Circular Economy Package

The European Union circular economy package (CEP) has amended a number of other key European directives including the Waste Framework Directive (2008/98/EC) and the Landfill Directive (1999/31/EC).

¹ “Towards the Sustainable Management of Wales’ Natural Resources”: Welsh Government; 2013: <https://beta.gov.wales/sites/default/files/consultations/2018-01/131029environment-consultation-en.pdf>

² “Summary of Responses - Towards the Sustainable Management of Wales’ Natural Resources”: Welsh Government; 2014 <https://beta.gov.wales/sites/default/files/consultations/2018-01/140327summary-of-responses-en.pdf>

We are jointly consulting with the UK Government and the other UK devolved administrations, on the transposition of the EU Circular Economy Package (CEP)³. Alongside the joint consultation, this consultation on Regulations under the Environment (Wales) Act 2016 and the Waste (Wales) Measure 2010, will inform the Welsh Government's transposition of parts of the CEP, namely the provisions regarding separate collection of dry recyclables and energy from waste bans (Articles 10 and 11 of the Waste Framework Directive), separate collection of biowaste (Article 22 of the Waste Framework Directive) and landfill bans (Article 5 of the Landfill Directive).

Article 10 of the Waste Framework Directive, now amended by the CEP, requires Member States to take the necessary measures to ensure the waste undergoes preparing for reuse, recycling and other recovery operations in accordance with the waste hierarchy. To facilitate this it requires that waste shall be subject to separate collection and not be mixed with other waste or other material of different properties.

Article 11 of the Waste Framework Directive also requires Member States to promote high quality recycling and set up separate collection for at least paper, metal, plastic and glass and by 1 January 2025, for textiles. Article 22 requires bio-waste (such as food) to be separated and recycled at source or collected separately and not mixed with other types of waste by 31 December 2023.

Article 5 of the Landfill Directive, also amended by the CEP, requires that member states take measures to ensure that separately collected wastes are not landfilled (other than wastes resulting from the treatment of such wastes where landfilling provides best environmental outcome). In addition, by 2030 all waste suitable for recycling or other recovery shall not be accepted in landfill unless landfilling provides the best environmental option.

The previous requirements of Articles 10 and 11 of the Waste Framework Directive have been transposed into domestic legislation, namely the requirement of the Waste (England and Wales) Regulations 2011 (as amended)⁴ for those that collect waste (for example, waste management companies and Local Authorities) to provide separate collection services for paper, metal, plastic and glass subject to the tests of Technical, Environmental and Economic Practicability (TEEP) and necessity.

However, these requirements have not driven a significant increase in separate presentation of recyclable wastes by businesses or an equivalent offering of these services by waste collectors.

This consultation will inform the introduction in Wales of a more comprehensive and enforceable package of legislation in this area.

³ [LINK to CEP con](#) when available

⁴ Waste (England and Wales) Regulations 2011 <http://www.legislation.gov.uk/uksi/2011/988/contents/made>
The Waste (England and Wales) (Amendment) Regulations 2012
<http://www.legislation.gov.uk/uksi/2012/1889/regulation/2/made>

Evidence for Change (RIA)

Research^{5,6,7} carried out as part of the development of the Act concluded that there is a market failure in the provision of separate waste collection services for non-domestic premises (such as businesses and the public sector) in Wales. Options analysis carried out as part of this work concluded the most appropriate intervention was to introduce a package of legislation acting at different points in the supply chain – at the waste collection company, the producer of the waste and at the different points of final disposal or recovery (landfill and energy from waste).

This led to the introduction of the provisions within the Act set out above.

To develop more detailed requirements for SIs to be brought in under the Act, to give effect to the provisions, we have commissioned modelling⁸ which has formed the basis for a Regulatory Impact Assessment⁹. The modelling examined the costs and benefits of a number of options:

- Do nothing (Baseline)
- Low level source segregation of materials by businesses; separate collection; incineration, landfill and food waste to sewer bans
- Moderate segregation of materials by businesses; separate collection; incineration, landfill and food waste to sewer bans
- High segregation of materials by businesses; separate collection; incineration, landfill and food waste to sewer bans

The materials considered in the scope for the regulations were paper, card, glass, plastic, metals, food, textiles and small waste electrical and electronic equipment (WEEE). The modelling also considered a number of exemptions from the requirements. Our approach to exemptions, based on this modelling, is summarised below.

⁵ Eunomia Research & Consulting (2011) *Options for the Segregation and Collection of Welsh I & C Waste, Report to the Welsh Government*, (November 2011)

<https://gweddill.gov.wales/docs/desh/publications/131014options-for-segregation-of-industrial-and-construction-waste-en.pdf>

⁶ Eunomia Research & Consulting (2013) *Additional Policy Options Analysis for Welsh Government: Costs and Benefits of Extending Waste Framework Directive requirements, Waste Treatment Restrictions, Requirement to Sort and a Ban on the Disposal of Food Waste to Sewer* (May 2013)

<https://gweddill.gov.wales/docs/desh/publications/131021additional-waste-policy-options-en.pdf>

⁷ Eunomia Research & Consulting (2013) *Additional Policy Options Analysis for Welsh Government: Costs and Benefits of Extending Waste Framework Directive requirements, Waste Treatment Restrictions, Requirement to Sort and a Ban on the Disposal of Food Waste to Sewer - Aggregated Outputs for Welsh Government White Paper* (September 2013)

<https://gweddill.gov.wales/docs/desh/publications/131021additional-waste-policy-options-aggregated-outputs-en.pdf>

⁸ Eunomia Research and Consulting (2019) *Regulatory Impact of Statutory Instruments*

<https://gov.wales/consultations>

⁹ Welsh Government (2019) *Draft Regulatory Impact Assessment: Regulatory Impact of Options to Increase Business Recycling in Wales - Statutory instruments under Part IV of the Environment (Wales) Act 2016 and the Waste (Wales) Measure 2010* <https://gov.wales/consultations>

The modelling predicts the best environmental and financial benefits are provided by the adoption of a moderate level of segregation. This therefore is our preferred option and is the option on which we are consulting.

Details of the costs and benefits of the other options are contained in the RIA.

What is proposed?

We are proposing to introduce legislation to:

- Require the occupiers of non-domestic premises (such as businesses, charities and public sector bodies) to present specified recyclable materials for collection separately from each other and from residual waste;
- Require those that collect the wastes from such premises (such as waste management businesses or Local Authorities) to collect them separately and keep them separate;
- Ban specified separately collected recyclable materials from incineration and landfill;
- Commence the ban on disposal of food waste to sewer from business premises.

The recyclable materials to be specified for separate collection and banned from incineration and landfill are paper, card, plastic, metal, glass, food, textiles and small waste electrical and electronic equipment (WEEE). Wood waste will be banned from landfill only.

In response to views expressed during the Environment Bill consultation and in subsequent discussion with stakeholders, we are no longer proposing to require wood waste to be presented separately for collection, collected separately and banned from incineration. This is due to the difficulties in regulating the use of different grades of wood waste considered against the environmental benefits of recycling waste wood rather than for example the use of wood waste for energy recovery.

However, we have extended the coverage of the options previously proposed to include textiles and small WEEE. Textiles have a high CO₂ equivalent footprint and are required to be separately collected (by 2025) by the EU CE Package and WEEE contains scarce and valuable metals of strategic importance with regard to resource security.

Who will it affect?

Non-domestic producers of waste, such as businesses, the public sector and charities, will be required to present the following waste streams separately for collection:

- food waste from premises producing more than 5kg/week;
- paper, card;
- glass;
- metal, plastic;
- small WEEE;
- textiles.

Those that dispose of food waste to sewer, such as hospitality businesses and public sector institutions, will no longer be able to do so, and will need to present the food waste separately for collection.

Waste collectors, such as waste management companies and Local Authorities, will be required to collect the above materials streams from non-domestic premises by means of separate collection and recycling rather than disposal. They will be prohibited from subsequently mixing the materials.

Operators of incineration and co-incineration facilities will no longer be able to accept the specified separately collected materials above at their facilities.

Operators of landfill facilities will no longer be able to accept the specified separately collected streams above at their facilities. In addition to the separately collected materials above, landfill operators will not be able to accept waste wood at their facilities.

Natural Resources Wales (NRW) will regulate all the above requirements other than the ban on food waste to sewer.

Local Authorities will regulate the ban on the disposal of food waste to sewer from non-domestic premises.

When will the requirements come into effect?

In order to allow businesses to prepare for the changes we propose that the duties will take effect in October 2021. However, pending the outcome of this consultation, the joint UK consultation on the transposition of the EU CE package, and subsequent discussion with UK Government, the Welsh Government may decide to transpose the requirements of the CE Package via Wales only legislation. Should this happen, separate collection and the bans on subsequent mixing of paper, metal, plastic and glass, together with the landfill and incineration bans for separately collected loads of these materials would need to take effect by July 2020.

Exemptions

In response to views expressed during the consultation and subsequent discussion with stakeholders, we have considered exemptions from the requirements in three areas:

- A de minimis threshold for business waste producers, below which the requirement to present waste separately for collection would not apply;
- An exemption to the requirement to present waste separately for business waste producers in rural areas;
- An exemption for the ban on the disposal of food waste to sewer for waste treated by specified treatment technologies.

Following consideration, we are proposing a de minimis exemption to the requirement to present food waste separately for collection and collect such waste separately, for businesses producing less than 5kg/week of food waste. This exemption takes into

consideration the financial practicalities of procuring a separate collection for small quantities of food waste, and mirrors similar exemptions in Scotland and Northern Ireland^{10,11}.

We are not proposing exemptions in any other areas. The reasons for this decision is contained in the appendix to the RIA.

Criminal Offences and Civil sanctions

Part 4 of the Act when commenced, will create criminal offences in relation to breach of prohibitions and failure to comply with the relevant requirements of the new sections 45AA and 34D of the Environmental Protection Act 1990. Likewise, the new section 9A of the Waste (Wales) Measure 2010 (ban on incineration of specified types of waste) confers power to create criminal offences for breach of those provisions. In addition, powers are available to the Welsh Ministers under Part 4 of the Act, to provide for civil sanctions in relation to those offences, in order to provide proportionate alternative enforcement provisions, to criminal sanctions. If the Welsh Ministers choose to exercise those powers, one or more civil sanctions Orders will need to be made, pursuant to Part 3 of the Regulatory Enforcement and Sanctions Act 2008.

What outcomes are we expecting?

Of the options modelled in the RIA the option presented in this consultation is the best option in terms of both high level costs and environmentally. It will result in a step change in the provision of separate waste collection services to businesses and the public sector in Wales by:

- Maximising the quantity and quantity of materials available for recycling
- Improving the quality of materials available for recycling
- Making sure that materials which could have been recycled are not wasted
- Protecting the environment by ensuring that only non-recyclable residual waste streams are finally disposed of in landfill or incinerated
- Providing greater certainty for investment in recycling, waste collection and treatment infrastructure
- Reduce reliance of welsh manufacturing on primary raw materials, thus improving resource security

This will make a key contribution to the transition to a Circular Economy in Wales, which is a core aim of Taking Wales Forward, Prosperity for All, and the Economic Action Plan as well as being a major contribution to decarbonisation and the delivery against the Well-being Goals.

¹⁰ *The Waste (Scotland) Regulations 2012*
<http://www.legislation.gov.uk/sdsi/2012/9780111016657/contents>

¹¹ *The Food Waste Regulations (Northern Ireland) 2015*
<http://www.legislation.gov.uk/nisr/2015/14/made>

The overall saving resulting from our proposal is modelled to be £452.5 million NPV over 10 years. It is estimated to result in a reduction in emissions of 3.2 million tonnes CO₂ equivalent and an additional 3.8 million tonnes of recyclate over that period.

Our proposal will drive the development of the waste collection services businesses want, with many businesses predicted to make savings by the RIA modelling.

Businesses producing waste are estimated by the modelling to experience financial impacts between a cost of £8/week and a saving of £629/week depending on the tonnage of waste they produce.

The waste management sector is a significant economic sector. The Office for National Statistics report 'UK environmental goods and services sector (EGSS): 2010 to 2015' estimates waste management activities in the UK accounted for output of £14.2 billion, gross value added of £5.5 billion and 101,000 FTE jobs in 2015.

Thus the regulations are a critical part of the move to a Circular Economy in Wales as they will help drive change and deliver the jobs, investment and resource security the sector can provide.

The proposal will also help Wales achieve compliance with the following elements of the European Union Circular Economy Package:

- The provisions regarding separate collection of dry recyclables and energy from waste bans (Articles 10 and 11 of the Waste Framework Directive)
- Separate collection of biowaste (Article 22 of the Waste Framework Directive)
- Landfill bans (Article 5 of the Landfill Directive).

Bringing forward regulations under the above powers also supports key Welsh Government goals including:

- The resource efficiency commitments in Programme for Government (Taking Wales Forward), the National Strategy (Prosperity for All) and A Low Carbon Wales
- The Economic Action Plan goals for sustainable economic growth.
- The Well-being of Future Generations (Wales) Act 2015, in particular regarding the aims of a prosperous, resilient and globally responsible Wales.
- Towards Zero Waste, the waste strategy for Wales.
- The Carbon budget and targets set under Part 2 of the Environment (Wales) act 2016.
- The Natural Resources Policy for Wales, in particular the aims of increasing resource efficiency and moving towards a more circular economy.
- Wales' commitment to the United Nations Sustainable Development Goals, for example goal 12 'Ensure sustainable consumption and production patterns' and its associated targets.

Next Steps

Following the consultation we will analyse the responses to it and the responses will inform the development of the statutory instruments described above.

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Q4	Do you agree that lead in times for the proposals are reasonable? If no, what alternative lead in time would you suggest?
Further comments	

Q5	Do you have any other comments on the impact of these proposals (for example, impacts on your organisation)?
Further comments	

Q6	We would like to know your views on the effects that our proposals to increase business waste recycling would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?
Further comments	

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Q7	Please also explain how you believe the proposals could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.
Further comments	

Q8	We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:
Further comments	