

EXPLANATORY MEMORANDUM TO
The Waste (Circular Economy) (Amendment) Regulations (Northern Ireland)
2020

SR 2020 No. 285

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Agriculture, Environment and Rural Affairs (the Department) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under powers conferred by section 2(2) of the European Communities Act 1972 and by Articles 4(3) and 77 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (the 1997 Order) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Statutory Rule transposes the EU Circular Economy Package (CEP) in Northern Ireland through amendments to domestic waste legislation. The CEP consisted of four amending EU waste Directives (Directive (EU) 2018/849, Directive (EU) 2018/850, Directive (EU) 2018/851 and Directive (EU) 2018/852).
- 2.2. The most significant amendments were made by Directive (EU) 2018/851, which amends Directive 2008/98/EC on waste (“the Waste Framework Directive”), and Directive (EU) 2018/850, which amends Directive 1999/31/EC on the landfill of waste (“the Landfill Directive”).
- 2.3. Directive (EU) 2018/852 makes minor changes in relation to Directive 94/62/EC on packaging and packaging waste (“the Packaging Directive”).
- 2.4. The following Directives were all amended by Directive (EU) 2018/849: Directive 2000/53/EC on end-of life vehicles (“the ELV Directive”), Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators (“the Batteries Directive”) and Directive 2012/19/EC on waste electrical and electronic equipment (WEEE) (“the WEEE Directive”).

3. Background

- 3.1. DAERA is committed to moving towards a more circular economy which will see us keeping resources in use as long as possible, extracting maximum value from them, minimizing waste and promoting resource efficiency. The CEP introduces a revised legislative framework, identifying steps for the reduction of waste and establishing an ambitious and credible long-term path for waste management and recycling.
- 3.2. Some of the key aspects of older EU waste legislation were transposed in Northern Ireland through the Waste and Contaminated Land (Northern Ireland) Order 1997 (SI 1997/2778). The Order, among other things, introduced measures designed to increase control over the processing and

handling of waste including provisions relating to waste management licensing, duty of care, registration of carriers, hazardous waste and producer responsibility.

- 3.3. The Waste Regulations (Northern Ireland) 2011 (SR 2011 No.127) implemented the requirements of the Waste Framework Directive by amending various other waste legislation in Northern Ireland and setting out requirements with respect to the separate collection of waste and the establishment of waste prevention programmes.
- 3.4. Other key waste legislation which implements the Waste Framework Directive in Northern Ireland includes the Waste Management Licensing Regulations (Northern Ireland) 2003 (SR 2003 No.493) and the Hazardous Waste Regulations (Northern Ireland) 2005 (SR 2005 No.300). These Regulations cover the licensing of waste activities and activities involving hazardous waste.
- 3.5. The Statutory Rule amends all of this legislation and, in addition, makes other minor amendments to the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) Regulations (Northern Ireland) 2000 (SR 2000 No.232), the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 (SR 2009 No.252), the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 (SR 2013 No.160) and the Controlled Waste and Duty of Care Regulations (Northern Ireland) 2013 (SR 2013 No.255).
- 3.6. The Packaging Directive was partly transposed by the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007 (SR 2007/198) which include provision around imposing, on defined producers, the obligation to recover and recycle packaging waste and the requirements around the purchase of packaging waste recovery notes (PRNs) to trade in packaging waste.
- 3.7. The Landfill Directive was transposed by the Landfill Regulations (Northern Ireland) 2003 (SR 2003 No.496), which make provision for issuing permits to create and operate a landfill and set out a pollution control regime for them, and the Landfill Allowances Scheme (Northern Ireland) Regulations 2004 (SR 2004/416), which make provisions for the allocation, borrowing, transfer and monitoring of landfill allowances allocated to district councils.
- 3.8. The Batteries and WEEE Directives are largely transposed through UK wide legislation: the Batteries and Accumulators (Placing on the Market) Regulations 2008 (S.I. 2008/2164), the Waste Batteries and Accumulators Regulations 2009 (S.I. 2009/890) and the Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113). A separate UK wide statutory instrument amends these Regulations to incorporate CEP changes.
- 3.9. In terms of CEP measures to be transposed by 2020, a combination of non-legislative changes and legislative changes with a minor impact (mainly 'copy out' i.e. the implementing legislation adopts the same wording as that of the Directive), will transpose most of the requirements of the CEP.

- 3.10. The bulk of substantive changes to laws, regulations and administrative provisions made under the CEP affect the Waste Framework Directive and the Landfill Directive.
- 3.11. Requirements for separate collection of waste are amended to provide more detail on the conditions or circumstances under which separate collection of waste is not necessary to ensure that waste undergoes preparing for reuse, recycling, or other recovery operations. These requirements are being met through amendments to the Waste Regulations (Northern Ireland) 2011
- 3.12. Amendments will ensure that waste collected separately for preparation for re-use or recycling must not be incinerated, except for waste resulting from subsequent treatment operations of the separately collected waste for which incineration delivers the best environmental outcome. This requirement is being met by amending Schedule 11 to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 to introduce a new statutory permit condition on waste incinerators, placing restrictions on waste separately collected for preparing for re-use or recycling from being accepted for incineration. Similar requirements in respect of the landfilling of such waste are being met by inserting a new provision into the Landfill Regulations (Northern Ireland) 2003 which places restrictions on waste separately collected for preparing for re-use or recycling from being accepted for landfill.
- 3.13. Unlawfully mixed hazardous waste will now have to be separated where that is technically feasible. This is being implemented by amending regulation 20 of the Hazardous Waste Regulations (Northern Ireland) 2005. Amendments are also made to regulation 19 of those Regulations so that mixing waste oils is prohibited only where mixing would impede the regeneration, or other recycling operation of the waste oil delivering an equivalent or a better overall environmental outcome, in accordance with the waste hierarchy.
- 3.14. There are additional matters that need to be included in waste management plans. These requirements are being met through the substitution of a new Schedule 3 to the Waste and Contaminated Land (Northern Ireland) Order 1997. While the Schedule will retain most of the text from the current Schedule (in addition to the new requirements), the substitution allows for some restructuring in order to improve readability. Minor related amendments are also made to Article 19 of that Order.
- 3.15. There are new requirements to be taken into account when establishing waste prevention programmes. These requirements are being met by inserting a Schedule into the Waste Regulations (Northern Ireland) 2011.
- 3.16. Regulations are being amended to require certain establishments and undertakings to keep records of the quantity of materials and products resulting from the treatment of hazardous waste. This requirement is being met by amending the Hazardous Waste Regulations (Northern Ireland) 2005 and Schedule 3 to the Waste Management Licensing Regulations (Northern Ireland) 2003.

- 3.17. The changes to the Packaging Directive relate mainly to producer responsibility for packaging waste. The UK Government and the devolved administrations have previously consulted on measures around this and amendments have been made to UK wide legislation on packaging through a separate statutory instrument.
- 3.18. The three remaining Directives affected by the CEP are the ELV Directive, the Batteries Directive and the WEEE Directive. These have all been amended by a single amending Directive (2018/849). The changes made to these three Directives are very minor and, where applicable, measures are in place to meet the requirements.

4. Consultation

- 4.1. A UK wide policy statement on the approach to transposition of the CEP was published in July 2020. A formal consultation on the Statutory Rule was not undertaken given the changes are relatively minor and technical. The policy statement can be viewed at <https://www.gov.uk/government/publications/circular-economy-package-policy-statement/circular-economy-package-policy-statement>.
- 4.2. A separate related consultation on a discussion document on the future recycling and separate collection of waste of a household nature in Northern Ireland took place between June and October 2020. A number of UK-wide consultations have also taken place on issues such as plastics tax, packaging waste and deposit return schemes which are connected with efforts to move to a more circular economy.

5. Equality Impact

- 5.1. An equality screening analysis has been carried out. No equality issues have been identified and accordingly an equality impact assessment is not considered necessary.

6. Regulatory Impact

- 6.1. A regulatory impact assessment has been completed and concluded that there will potentially be fairly minor costs to landfill operators as a result of the provisions in the Statutory Rule. There will also be potential benefits to businesses in the waste recovery sector and to the environment through reduced GHG emissions.

7. Financial Implications

- 7.1. The Regulations will not have any significant financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Statutory Rule complies with the provisions set out in Section 24. The Rule does not discriminate on grounds of religious belief or political opinion nor does it modify the European Communities Act 1972, the Human Rights Act 1998 or other statutory provisions listed in section 7 of the 1998 Act.

9. EU Implications

- 9.1. The Statutory Rule transposes the main requirements of the CEP in Northern Ireland and, in doing so, will help the Department comply with its requirements under EU law.

10. Parity or Replicatory Measure

- 10.1. The Waste (Circular Economy) (Amendment) Regulations 2020 transposes the CEP for England and Wales and, through amendments to legislation that applies in Scotland and Northern Ireland, partially transposes the CEP in Scotland and Northern Ireland also. Separate legislation has also been made in Scotland to transpose the CEP.

11. Additional Information

- 11.1. Not applicable.