



Environment Act 2021

2021 CHAPTER 30

PART 3

WASTE AND RESOURCE EFFICIENCY

Managing waste

57 Separation of waste

- (1) The Environmental Protection Act 1990 is amended as follows.
- (2) In section 30 (definitions of authorities), after subsection (4) insert—
 - “(4A) In this Part—
 - “English waste collection authority” means a waste collection authority whose area is in England;
 - “English waste disposal authority” means a waste disposal authority whose area is in England.”
- (3) In section 33ZA (fixed penalty notices), in subsection (12) omit the definition of “English waste collection authority”.
- (4) For section 45A substitute—

“45A England: separate collection of household waste

- (1) This section applies in relation to arrangements made under section 45(1)(a) for an English waste collection authority to collect household waste, unless they are arrangements in relation to which section 45AZA applies.
- (2) The arrangements must meet the conditions in subsections (3) to (8) (subject to any provision in regulations under section 45AZC).
- (3) The first condition is that recyclable household waste must be collected separately from other household waste.

Status: This is the original version (as it was originally enacted).

- (4) The second condition is that recyclable household waste must be collected for recycling or composting.
- (5) The third condition is that recyclable household waste in each recyclable waste stream must be collected separately, except so far as provided by subsection (6).
- (6) Recyclable household waste in two or more recyclable waste streams may be collected together where—
 - (a) it is not technically or economically practicable to collect recyclable household waste in those recyclable waste streams separately, or
 - (b) collecting recyclable household waste in those recyclable waste streams separately has no significant environmental benefit (having regard to the overall environmental impact of collecting it separately and of collecting it together).
- (7) But recyclable household waste within subsection (10)(a) to (d) may not be collected together with recyclable household waste within subsection (10)(e) or (f).
- (8) The fourth condition is that recyclable household waste which is food waste must be collected at least once a week.
- (9) Household waste is “recyclable household waste” if—
 - (a) it is within any of the recyclable waste streams, and
 - (b) it is of a description specified in regulations made by the Secretary of State.
- (10) For the purposes of this section the recyclable waste streams are—
 - (a) glass;
 - (b) metal;
 - (c) plastic;
 - (d) paper and card;
 - (e) food waste;
 - (f) garden waste.

45AZA England: separate collection of household waste from relevant non-domestic premises

- (1) This section applies in relation to arrangements for household waste to be collected from relevant non-domestic premises in England by a person who, in collecting the waste—
 - (a) is acting in the course of a business (whether or not for profit), or
 - (b) is exercising a public function (including a function under section 45(1)(a)).
- (2) The arrangements must meet the conditions in subsections (3) to (7) (subject to any provision in regulations under section 45AZC).
- (3) The first condition is that recyclable household waste must be collected separately from other household waste.

Status: This is the original version (as it was originally enacted).

- (4) The second condition is that recyclable household waste must be collected for recycling or composting.
- (5) The third condition is that recyclable household waste in each recyclable waste stream must be collected separately, except so far as provided by subsection (6).
- (6) Recyclable household waste in two or more recyclable waste streams may be collected together where—
 - (a) it is not technically or economically practicable to collect recyclable household waste in those recyclable waste streams separately, or
 - (b) collecting recyclable household waste in those recyclable waste streams separately has no significant environmental benefit (having regard to the overall environmental impact of collecting it separately and of collecting it together).
- (7) But recyclable household waste within subsection (10)(a) to (d) may not be collected together with recyclable household waste within subsection (10)(e).
- (8) The person who presents household waste from the premises for collection under the arrangements must present it separated in accordance with the arrangements.

This subsection does not apply so far as the person is subject to an equivalent duty by virtue of a notice under section 46.
- (9) Household waste is “recyclable household waste” if—
 - (a) it is within any of the recyclable waste streams, and
 - (b) it is of a description specified in regulations made by the Secretary of State.
- (10) For the purposes of this section the “recyclable waste streams” are—
 - (a) glass;
 - (b) metal;
 - (c) plastic;
 - (d) paper and card;
 - (e) food waste.
- (11) For the purposes of this section “relevant non-domestic premises” means—
 - (a) a residential home;
 - (b) premises forming part of a university or school or other educational establishment;
 - (c) premises forming part of a hospital or nursing home;
 - (d) premises of a description specified in regulations made by the Secretary of State.
- (12) Regulations under subsection (11)(d) may not specify domestic properties (within the meaning of section 75(5)(a)).

Status: This is the original version (as it was originally enacted).

45AZB England: separate collection of industrial or commercial waste

- (1) This section applies in relation to arrangements for industrial or commercial waste to be collected from premises in England by a person who, in collecting the waste—
- (a) is acting in the course of a business (whether or not for profit), or
 - (b) is exercising a public function (including a function under section 45(1)(b) or (2)).

- (2) So far as they relate to waste which is similar in nature and composition to household waste (“relevant waste”) the arrangements must meet the conditions in subsections (3) to (7).

This is subject to any provision in regulations under section 45AZC.

- (3) The first condition is that recyclable relevant waste must be collected separately from other relevant waste.
- (4) The second condition is that recyclable relevant waste must be collected for recycling or composting.
- (5) The third condition is that recyclable relevant waste in each recyclable waste stream must be collected separately, except so far as provided by subsection (6).
- (6) Recyclable relevant waste in two or more recyclable waste streams may be collected together where—
 - (a) it is not technically or economically practicable to collect recyclable relevant waste in those recyclable waste streams separately, or
 - (b) collecting recyclable relevant waste in those recyclable waste streams separately has no significant environmental benefit (having regard to the overall environmental impact of collecting it separately and of collecting it together).
- (7) But recyclable relevant waste within subsection (10)(a) to (d) may not be collected together with recyclable relevant waste within subsection (10)(e).
- (8) The person who presents relevant waste from the premises for collection under the arrangements must present it separated in accordance with the arrangements.

This subsection does not apply so far as the person is subject to an equivalent duty by virtue of a notice under section 47.

- (9) Relevant waste is “recyclable relevant waste” if—
 - (a) it is within any of the recyclable waste streams, and
 - (b) it is of a description specified in regulations made by the Secretary of State.
- (10) For the purposes of this section the “recyclable waste streams” are—
 - (a) glass;
 - (b) metal;
 - (c) plastic;
 - (d) paper and card;

- (e) food waste.

45AZC Sections 45A to 45AZB: powers to exempt and extend

- (1) The Secretary of State may by regulations provide—
 - (a) for exemptions from the condition in section 45A(5), 45AZA(5) or 45AZB(5);
 - (b) for exemptions from the application of section 45AZA or 45AZB;
 - (c) for exemptions from the application of section 45AZA or 45AZB in relation to household waste or relevant waste in recyclable waste streams specified in the regulations.
- (2) The Secretary of State may exercise the power in subsection (1)(a) in relation to two or more recyclable waste streams only if satisfied that doing so will not significantly reduce the potential for recyclable household waste or recyclable relevant waste in those waste streams to be recycled or composted.
- (3) The Secretary of State may by regulations amend sections 45A to 45AZB so as to—
 - (a) add further recyclable waste streams, and
 - (b) make provision about the extent to which recyclable household waste or recyclable relevant waste in any of those waste streams may or may not be collected together with recyclable household waste or recyclable relevant waste in another recyclable waste stream.
- (4) The Secretary of State may exercise the power in subsection (3)(a) in relation to a waste stream only if satisfied that—
 - (a) there is waste in that waste stream which is suitable for recycling or composting, and recycling or composting it will have an environmental benefit,
 - (b) all English waste collection authorities can make arrangements for collecting waste in that waste stream which comply with the conditions in section 45A, 45AZA or 45AZB (as appropriate), taking account of any amendments to be made under subsection (3)(b), and
 - (c) there is a market for it after its collection.
- (5) Before making regulations under this section the Secretary of State must consult—
 - (a) the Environment Agency,
 - (b) English waste collection authorities,
 - (c) English waste disposal authorities, and
 - (d) anyone else the Secretary of State considers appropriate.
- (6) The requirement in subsection (5) may be met by consultation carried out before this section comes into force.

45AZD Sections 45A to 45AZB: duties of waste collectors

- (1) Subsection (2) applies where—
 - (a) a person collects or proposes to collect waste under arrangements to which section 45A, 45AZA or 45AZB applies, and

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- (b) the arrangements include arrangements to collect recyclable household waste or recyclable relevant waste in two or more recyclable waste streams together in reliance on section 45A(6), 45AZA(6) or 45AZB(6).
- (2) The person must prepare a written assessment of why the person considers that the section relied on applies.

45AZE Sections 45 to 45AZD: guidance

- (1) The Secretary of State may issue guidance about the duties imposed by sections 45 to 45AZD.
- (2) The guidance may in particular deal with—
 - (a) the circumstances in which it may not be technically or economically practicable to collect recyclable household waste or recyclable relevant waste in recyclable waste streams separately, or in which separate collection may not have significant environmental benefit;
 - (b) the frequency with which household waste other than recyclable household waste which is food waste should be collected;
 - (c) the kinds of waste which are relevant waste for the purposes of section 45AZB;
 - (d) assessments under section 45AZD.
- (3) The guidance may make different provision in relation to sections 45A, 45AZA and 45AZB.
- (4) Before issuing guidance under this section the Secretary of State must consult—
 - (a) the Environment Agency,
 - (b) English waste collection authorities,
 - (c) English waste disposal authorities, and
 - (d) anyone else the Secretary of State considers appropriate.
- (5) The requirement in subsection (4) may be met by consultation carried out before this section comes into force.
- (6) A waste collection authority, and any party to arrangements to which section 45AZA or 45AZB applies, must have regard to the guidance
- (7) The Secretary of State must lay before Parliament, and publish, the guidance.

45AZF Sections 45AZA and 45AZB: compliance notices

- (1) This section applies where the Environment Agency considers that a person other than an English waste collection authority—
 - (a) is a party to arrangements for the collection of household waste which fail to comply with section 45AZA,
 - (b) is a party to arrangements for the collection of relevant waste which fail to comply with section 45AZB, or
 - (c) is failing to comply with section 45AZA(8) or 45AZB(8).

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- (2) It may give that person a notice (a “compliance notice”) requiring them to take specified steps within a specified period to secure that the failure does not continue or recur.
- (3) A compliance notice must—
 - (a) specify the failures to comply with section [45AZA](#) or [45AZB](#),
 - (b) specify the steps which must be taken for the purpose of preventing the failure continuing or recurring,
 - (c) specify the period within which those steps must be taken, and
 - (d) give information as to the rights of appeal (including the period within which an appeal must be brought).
- (4) A person who fails to comply with a compliance notice commits an offence.
- (5) A person who commits an offence under subsection (4) is liable on summary conviction or conviction on indictment to a fine.

45AZG Sections 45AZA and 45AZB: appeals against compliance notices

- (1) A person who is given a compliance notice may appeal to the First-tier Tribunal against—
 - (a) the notice, or
 - (b) any requirement in the notice.
- (2) The notice or requirement has effect pending the determination of the appeal, unless the tribunal decides otherwise.
- (3) The tribunal may—
 - (a) quash the notice or requirement,
 - (b) confirm the notice or requirement,
 - (c) vary the notice or requirement,
 - (d) take any steps the Environment Agency could take in relation to the failure giving rise to the notice or requirement, or
 - (e) remit any matter relating to the notice or requirement to the Environment Agency.”
- (5) In section 46(2) (receptacles for household waste) for the words from “subject to” to the end substitute—
 - “(a) subject to that, a waste collection authority whose area is in Wales may require separate receptacles or compartments of receptacles to be used for waste which is to be recycled and waste which is not;
 - (b) an English waste collection authority may require separate receptacles or compartments of receptacles to be used for the purposes of complying with its duties under section [45A](#) or [45AZA](#).”
- (6) In section 47(3) (receptacles for commercial or industrial waste) at the end insert “, but an English waste collection authority may require separate receptacles or compartments of receptacles to be used for the purposes of complying with section 45AZB so far as it applies to waste of the kind in question.”
- (7) In section 160A(2) (regulations and orders) (as inserted by section 63), in the Table, at the appropriate place insert—

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“45AZC (separation of waste) | any regulations under that section.”

(8) In section 41(1) of the Environment Act 1995 (powers to make charging schemes) after paragraph (r) (as inserted by section 64) insert—

“(s) as a means of recovering costs which are incurred by it in performing functions relating to sections 45A to 45AZB of the Environmental Protection Act 1990, the Agency may require the payment to it of such charges as may from time to time be prescribed;”.

(9) In section 108(15) of the Environment Act 1995 (powers of entry), in the definition of “pollution control functions” in relation to a waste collection authority, in paragraph (a) for “, 45A” substitute “to 45AZD”.

58 Electronic waste tracking: Great Britain

(1) The Environmental Protection Act 1990 is amended in accordance with subsections (2) and (3).

(2) After section 34C insert—

“Electronic waste tracking

34CA Electronic waste tracking

(1) The relevant national authority may by regulations make provision for the purpose of tracking relevant waste, including provision about the establishment of an electronic system (“the system”) for that purpose.

(2) The regulations may impose requirements on relevant waste controllers, or a waste regulation authority, to take specified steps to secure the entry into the system of specified information about, or which is relevant to the tracking or regulation of, specified relevant waste.

(3) The information which may be specified includes information about—

- (a) the processing, movement or transfer to another person of relevant waste or waste processing products;
- (b) persons to whom relevant waste or waste processing products have been transferred;
- (c) the carrying out of any activity by relevant waste controllers in relation to, or in connection with, relevant waste or waste processing products;
- (d) relevant waste controllers.

(4) The regulations may impose requirements on relevant waste controllers to take specified steps to enable physical identification of specified relevant waste or waste processing products.

(5) The regulations may allow relevant waste controllers, or a waste regulation authority, to make arrangements for other persons to discharge their obligations under the regulations, and may impose requirements on such persons in connection with such arrangements.

- (6) The regulations must provide for an exemption for digitally excluded persons from any requirement that would involve the use of electronic communications or the keeping of electronic records, but may impose alternative requirements on those persons that do not involve either.
- (7) The regulations may designate a person to establish, operate or maintain the system and may confer functions on such a person.
- (8) The regulations may make provision about how information held on the system is to be used including provision—
 - (a) about who may access the information;
 - (b) permitting, or requiring, the disclosure, publication or transfer to another electronic system of such information;
 - (c) imposing requirements on persons who obtain such information not to further disclose it.
- (9) The regulations may impose fees or charges, payable to a person designated by, or in accordance with, the regulations, on persons subject to any requirement imposed by the regulations.
- (10) The amount of such fees or charges may reflect the costs of establishing, operating or maintaining the system and any other costs incurred in connection with the tracking of relevant waste by a person designated to establish, operate or maintain the system.
- (11) The relevant national authority may provide grants or loans to a person designated to establish, operate or maintain the system.
- (12) In this section—
 - “digitally excluded person” means a person—
 - (a) who is a practising member of a religious society or order whose beliefs are incompatible with using electronic communications or keeping electronic records, or
 - (b) for whom it is not reasonably practicable to use electronic communications or to keep electronic records for any reason (including age, disability or location);
 - “extractive waste”—
 - (a) in relation to regulations made in relation to England or Wales, has the meaning it has in this Part (as it extends to England and Wales);
 - (b) in relation to regulations made in relation to Scotland, has the meaning it has in the Management of Extractive Waste (Scotland) Regulations 2010 (S.S.I. 2010/60);
 - “relevant national authority” means—
 - (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;
 - (c) in relation to Scotland, the Scottish Ministers;
 - “relevant waste” means controlled waste or extractive waste;
 - “relevant waste controller” means any person who—
 - (a) is subject to the duty in section 34(1) (duty of care as respects controlled waste),

Status: This is the original version (as it was originally enacted).

(b) imports, produces, carries, keeps, treats, manages or disposes of extractive waste or, as a dealer or broker, has control of such waste, or

(c) exports relevant waste;

“specified” means specified or described in the regulations;

“waste processing product” means any product of the processing of relevant waste, including material which is not relevant waste or which is not derived from relevant waste.

34CB Further provision about regulations under section 34CA

- (1) Regulations under section 34CA(1) may make provision about the enforcement of requirements imposed by or under the regulations.
- (2) The regulations may include provision—
 - (a) creating criminal offences punishable with a fine in respect of failures to comply with the regulations;
 - (b) about such offences.
- (3) The regulations may include provision—
 - (a) for, about or connected with the imposition of civil sanctions by an enforcement authority;
 - (b) in the case of a civil sanction that requires the payment of an amount, for that amount—
 - (i) to be specified in the regulations;
 - (ii) to be determined by an enforcement authority in accordance with the regulations;
 - (c) for such a determination to be made by reference to factors specified or described in the regulations which may include, for example, the turnover of a business or the costs of complying with the requirement being enforced (and the regulations may provide that the amount to be paid may exceed the amount of those costs);
 - (d) about appeals against the imposition of a civil sanction.
- (4) In this section “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).
- (5) The regulations may include provision for the imposition of sanctions of that kind whether or not—
 - (a) the conduct in respect of which the sanction is imposed constitutes an offence,
 - (b) the enforcement authority is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008, or
 - (c) the relevant national authority may make provision for the imposition of sanctions under that Part.
- (6) The regulations may make different provision for different purposes.

(7) The regulations may make consequential, supplementary, incidental, transitional or saving provision, including provision amending, repealing or revoking primary legislation or retained direct EU legislation.

(8) In this section—

“enforcement authority” means the Environment Agency, the Natural Resources Body for Wales, a waste collection authority for an area in England or Wales or the Scottish Environment Protection Agency;

“primary legislation” means—

- (a) in relation to regulations made by the Secretary of State, an Act of Parliament;
- (b) in relation to regulations made by the Welsh Ministers, an Act of Parliament or an Act or Measure of Senedd Cymru;
- (c) in relation to regulations made by the Scottish Ministers, an Act of Parliament or an Act of the Scottish Parliament.”

(3) In section 160A(2) (regulations and orders) (as inserted by section 63), in the Table, at the appropriate place insert—

“34CA (electronic waste tracking)

regulations that—

- (a) are the first set of regulations to be made by the relevant national authority (within the meaning given by section 34CA(12)) under section 34CA,
- (b) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations made by that authority under that section,
- (c) increase the maximum penalty for a criminal offence under existing regulations made by that authority under that section,
- (d) provide for conduct to be subject to a civil sanction (within the meaning given by section 34CB(4)) which is not subject to a civil sanction under existing regulations made by that authority under that section, or
- (e) amend, repeal or revoke a provision contained in primary legislation (within the meaning given by section 34CB(8)) or retained direct principal EU legislation.”

(4) In section 41(1) of the Environment Act 1995 (powers to make charging schemes) after paragraph (d) insert—

“(da) as a means of recovering costs incurred by it in performing functions conferred by regulations made under section 34CA of the Environmental Protection Act 1990 (electronic waste tracking) the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;”.

Status: This is the original version (as it was originally enacted).

59 Electronic waste tracking: Northern Ireland

- (1) The Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19)) is amended as follows.
- (2) After Article 5F insert—

“Electronic waste tracking

5G Electronic waste tracking

- (1) The Department may by regulations make provision for the purpose of tracking relevant waste, including provision about the establishment of an electronic system (“the system”) for that purpose.
- (2) The regulations may impose requirements on relevant waste controllers, or the Department, to take specified steps to secure the entry into the system of specified information about, or which is relevant to the tracking or regulation of, specified relevant waste.
- (3) The information which may be specified includes information about—
 - (a) the processing, movement or transfer to another person of relevant waste or waste processing products;
 - (b) persons to whom relevant waste or waste processing products have been transferred;
 - (c) the carrying out of any activity by relevant waste controllers in relation to, or in connection with, relevant waste or waste processing products;
 - (d) relevant waste controllers.
- (4) The regulations may impose requirements on relevant waste controllers to take specified steps to enable physical identification of specified relevant waste or waste processing products.
- (5) The regulations may allow relevant waste controllers, or the Department, to make arrangements for other persons to discharge their obligations under the regulations, and may impose requirements on such persons in connection with such arrangements.
- (6) The regulations must provide for an exemption for digitally excluded persons from any requirement that would involve the use of electronic communications or the keeping of electronic records, but may impose alternative requirements on those persons that do not involve either.
- (7) The regulations may designate a person to establish, operate or maintain the system and may confer functions on such a person.
- (8) The regulations may make provision about how information held on the system is to be used including provision—
 - (a) about who may access the information;
 - (b) permitting, or requiring, the disclosure, publication or transfer to another electronic system of such information;
 - (c) imposing requirements on persons who obtain such information not to further disclose it.

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- (9) The regulations may impose fees or charges, payable to a person designated by, or in accordance with, the regulations, on persons subject to any requirement imposed by the regulations.
- (10) The amount of such fees or charges may reflect the costs of establishing, operating or maintaining the system and any other costs incurred in connection with the tracking of relevant waste by a person designated to establish, operate or maintain the system.
- (11) The Department may provide grants or loans to a person designated to establish, operate or maintain the system.
- (12) In this Article—
 - “digitally excluded person” means a person—
 - (a) who is a practising member of a religious society or order whose beliefs are incompatible with using electronic communications or keeping electronic records, or
 - (b) for whom it is not reasonably practicable to use electronic communications or to keep electronic records for any reason (including age, disability or location);
 - “extractive waste” has the meaning it has in the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 (S.R. 2015 No. 85);
 - “relevant waste” means controlled waste or extractive waste;
 - “relevant waste controller” means any person who—
 - (a) is subject to the duty in Article 5(1) (duty of care as respects controlled waste),
 - (b) imports, produces, carries, keeps, treats, manages or disposes of extractive waste or, as a dealer or broker, has control of such waste, or
 - (c) exports relevant waste;
 - “specified” means specified or described in the regulations;
 - “waste processing product” means any product of the processing of relevant waste, including material which is not relevant waste or which is not derived from relevant waste.

5H Further provision about regulations under Article 5G

- (1) Regulations under Article 5G may make provision about the enforcement of requirements imposed by or under the regulations.
- (2) The regulations may include provision—
 - (a) creating criminal offences punishable with a fine in respect of failures to comply with the regulations;
 - (b) about such offences.
- (3) The regulations may include provision—
 - (a) for, about or connected with the imposition of civil sanctions by the Department;
 - (b) in the case of a civil sanction that requires the payment of an amount, for that amount—

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- (i) to be specified in the regulations;
 - (ii) to be determined by the Department in accordance with the regulations;
 - (c) for such a determination to be made by reference to factors specified or described in the regulations which may include, for example, the turnover of a business or the costs of complying with the requirement being enforced (and the regulations may provide that the amount to be paid may exceed the amount of those costs);
 - (d) about appeals against the imposition of a civil sanction.
- (4) In this Article “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).
- (5) The regulations may include provision for the imposition of sanctions of that kind whether or not the conduct in respect of which the sanction is imposed constitutes an offence.
- (6) The regulations may make consequential, supplementary, incidental, transitional or saving provision, including provision amending, repealing or revoking any statutory provision.”
- (3) In Article 82 (regulations etc) after paragraph (1A) insert—
- “(1B) Paragraph (1) does not apply to regulations made by the Department under Article 5G that—
- (a) are the first set of regulations made under that Article,
 - (b) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations under that Article,
 - (c) increase the maximum penalty for a criminal offence under existing regulations under that Article,
 - (d) provide for conduct to be subject to a civil sanction (within the meaning given by Article 5H(4)) which is not subject to a civil sanction under existing regulations under that Article,
 - (e) amend or repeal a provision contained in Northern Ireland legislation or an Act of Parliament, or
 - (f) amend or revoke a provision contained in retained direct principal EU legislation.
- (1C) Regulations to which paragraph (1) does not apply by virtue of paragraph (1B) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.”

60 Hazardous waste: England and Wales

- (1) The Environmental Protection Act 1990 is amended in accordance with subsections (2) to (4).
- (2) After section 62 insert—

“62ZA Special provision with respect to hazardous waste in England and Wales

- (1) The relevant national authority may, by regulations, make provision for, about or connected with the regulation of hazardous waste in England and Wales.
- (2) Provision that may be made in the regulations includes provision—
 - (a) prohibiting or restricting any activity in relation to hazardous waste;
 - (b) for the giving of directions by waste regulation authorities with respect to matters connected with any activity in relation to hazardous waste;
 - (c) imposing requirements about how hazardous waste may be kept (including requirements about the quantities of hazardous waste which may be kept at any place);
 - (d) about hazardous waste that originated outside England or Wales;
 - (e) about the registration of hazardous waste controllers or places where activities in relation to hazardous waste are carried out;
 - (f) for the keeping of records by hazardous waste controllers;
 - (g) for the inspection of those records by waste regulation authorities or specified persons;
 - (h) for the provision by hazardous waste controllers of copies of, or information derived from, those records to waste regulation authorities or specified persons;
 - (i) for hazardous waste controllers to inform waste regulation authorities, or specified persons, when carrying out activities in relation to hazardous waste;
 - (j) about the circumstances in which waste which is not hazardous waste, but which shares characteristics with hazardous waste, is to be treated as hazardous waste;
 - (k) for, about or connected with criminal offences;
 - (l) for, about or connected with the imposition of civil sanctions.
- (3) The regulations may not provide for an offence to be punishable—
 - (a) on summary conviction, by imprisonment, or
 - (b) on conviction on indictment, by a term of imprisonment exceeding two years.
- (4) For the purposes of this section “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).
- (5) The regulations may make provision for, about or connected with the imposition of a sanction of that kind whether or not—
 - (a) the conduct in respect of which the sanction is imposed constitutes an offence, or
 - (b) the person imposing it is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.
- (6) The regulations may also include provision—

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- (a) for the supervision by waste regulation authorities—
 - (i) of activities in relation to hazardous waste, or
 - (ii) of hazardous waste controllers;
 - (b) about the keeping of records (which may include registers of hazardous waste controllers and places where hazardous waste may be kept or processed) by waste regulation authorities;
 - (c) as to the recovery of expenses or other charges for the treatment, keeping or disposal or the re-delivery of hazardous waste by waste regulation authorities or hazardous waste controllers;
 - (d) as to appeals to the relevant national authority from decisions of waste regulation authorities.
- (7) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).
- (8) Regulations under this section may confer functions (including functions involving the exercise of a discretion) on the relevant national authority or a waste regulation authority.
- (9) The regulations may—
- (a) make different provision for different purposes;
 - (b) make incidental, supplementary, consequential, transitional or saving provision.
- (10) For the purposes of this section “mixing” in relation to hazardous waste means—
- (a) diluting it (with any substance);
 - (b) mixing it with other hazardous waste of a different type, or that has different characteristics;
 - (c) mixing it with any other substance or material (whether waste or not).
- (11) In this section—
- “activity”, in relation to hazardous waste, includes—
- (a) keeping, collecting, receiving, importing, exporting, transporting or producing hazardous waste;
 - (b) sorting, treating, recovering, mixing or otherwise processing hazardous waste;
 - (c) disposing of hazardous waste in any manner (including providing hazardous waste to another person for the purposes of that person carrying out an activity in relation to it);
 - (d) examining, testing or classifying hazardous waste (including doing any of those things to waste in connection with establishing whether it is hazardous);
 - (e) acting as a broker of, or dealer in, hazardous waste;
 - (f) directing or supervising another person in relation to an activity in relation to hazardous waste;
- “hazardous waste controller” means a person who carries out any activity in relation to hazardous waste;
- “relevant national authority” means—
- (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers;

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“specified” means specified in the regulations.”

(3) In section 75 (meaning of “waste” etc) for subsection (8A) substitute—

“(8A) In the application of this Part to England, “hazardous waste” means—

- (a) any waste identified as hazardous waste in—
 - (i) the waste list as it applies in relation to England, or
 - (ii) regulations made by the Secretary of State under regulation 3 of the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1540), and
- (b) any other waste that is treated as hazardous waste for the purposes of—
 - (i) regulations made by the Secretary of State under section 62ZA, or
 - (ii) the Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894).

(8B) In the application of this Part to Wales, “hazardous waste” means—

- (a) any waste identified as hazardous waste in—
 - (i) the waste list as it applies in relation to Wales, or
 - (ii) regulations made by the Welsh Ministers under regulation 3 of the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1540), and
- (b) any other waste that is treated as hazardous waste for the purposes of—
 - (i) regulations made by the Welsh Ministers under section 62ZA, or
 - (ii) the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W.138)).

(8C) In subsections (8A) and (8B) “the waste list” means the list of waste contained in the Annex to Commission Decision of 3 May 2000 replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of [Council Directive 75/442/EEC](#) on waste and [Council Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of [Council Directive 91/689/EEC](#) on hazardous waste (2000/532/EC).”

(4) In section 160A(2) (regulations and orders) (as inserted by section 63), in the Table, at the appropriate place insert—

“62ZA (regulation of hazardous waste in England and Wales)	regulations that— <ul style="list-style-type: none">(a) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations made by the relevant national authority (within the meaning given by section 62ZA(11)) under section 62ZA,(b) increase the maximum penalty for a criminal offence under existing regulations made by that authority under that section, or
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Status: This is the original version (as it was originally enacted).

(c) provide for conduct to be subject to a civil sanction (within the meaning given by section 62ZA(4)) which is not subject to a civil sanction under existing regulations made by that authority under that section.”

(5) In section 41(1) of the Environment Act 1995 (power to make charging schemes), before paragraph (d) insert—

“(cc) as a means of recovering costs incurred by it in performing functions conferred by regulations made under section 62ZA of the Environmental Protection Act 1990 (special provision with respect to hazardous waste), the Agency or the Natural Resources Body for Wales may require the payment to it of such charges as may from time to time be prescribed;”.

(6) In section 114 of the Environment Act 1995 (delegation or reference of appeals etc), in subsection (2)(a)(iii) before “, 78L” insert “62ZA(6)(d)”.

61 Hazardous waste: Northern Ireland

(1) The Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19)) is amended as follows.

(2) In Article 30 (special provision with respect to hazardous waste)—

(a) in paragraph (1), for the words from “regulations” to “disposal” substitute “the Department may, by regulations, make provision for, about or connected with the regulation”;

(b) in paragraph (2)—

(i) before sub-paragraph (a) insert—

“(za) prohibiting or restricting the treatment, keeping or disposal of hazardous waste or any other activity in relation to such waste;”;

(ii) in sub-paragraph (a), after “hazardous waste” insert “or any other activity in relation to such waste”;

(iii) after sub-paragraph (g) insert—

“(h) for, about or connected with the imposition of civil sanctions.”;

(c) after that paragraph insert—

“(2A) For the purposes of this Article “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).

(2B) The regulations may include provision for, about or connected with the imposition of a sanction of that kind whether or not—

(a) the conduct in respect of which the sanction is imposed constitutes an offence, or

(b) the person imposing it is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.”;

(d) after paragraph (3) insert—

Status: This is the original version (as it was originally enacted).

“(3A) The regulations may make consequential, supplementary, incidental, transitional or saving provision.”

(3) In Article 82 (regulations etc) after paragraph (1C) (as inserted by section 59) insert—

“(1D) Paragraph (1) does not apply to regulations made by the Department under Article 30 that provide for conduct to be subject to a civil sanction (within the meaning given by Article 30(2A)) which is not subject to a civil sanction under existing regulations under that Article.

(1E) Regulations to which paragraph (1) does not apply by virtue of paragraph (1D) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.”

62 Frontier shipments of waste

(1) Section 141 of the Environmental Protection Act 1990 (power to prohibit or restrict the importation or exportation of waste) is amended in accordance with subsections (2) to (8).

(2) In the heading—

- (a) for “prohibit or restrict” substitute “regulate”;
- (b) after “waste” insert “or the transit of waste for export”.

(3) For subsection (1) substitute—

“(1) The Secretary of State may, by regulations, make provision for, about or connected with the regulation of the importation or exportation of waste or the transit of waste for export.

(1A) Provision that may be made in regulations under this section includes provision prohibiting or restricting—

- (a) the importation of waste;
- (b) the landing and unloading of waste in the United Kingdom;
- (c) the exportation of waste;
- (d) the loading of waste for exportation;
- (e) the transit of waste for export.

(1B) The provision that may be made by virtue of subsection (1A) includes provision which relates to—

- (a) the intended final destination of waste, or
- (b) the countries or territories it is intended to pass through before reaching that destination.”

(4) For subsection (3) substitute—

“(3) Regulations under this section may confer functions on the Secretary of State or a waste regulation authority, including functions—

- (a) involving the exercise of a discretion;
- (b) relating to enforcement.”

(5) Omit subsection (4).

(6) In subsection (5)—

Status: This is the original version (as it was originally enacted).

- (a) omit paragraph (a);
 - (b) after that paragraph insert—
 - “(aa) provide for the Secretary of State to issue general directions as to the exercise by waste regulation authorities of their functions in connection with the regulation of the importation or exportation of waste or the transit of waste for export;”;
 - (c) in paragraph (b) omit “prescribed in or under the regulations”;
 - (d) after paragraph (b) insert—
 - “(ba) provide for the charging by waste regulation authorities of fees or charges payable by persons involved in the importation or exportation of waste or the transit of waste for export;
 - (bb) provide that such fees or charges may be used by waste regulation authorities to meet costs incurred in exercising their functions in connection with the regulation of those activities;”;
 - (e) in paragraph (d), for the words from “to” to the end substitute “, with or without modifications, to section 108(4) of the Environment Act 1995 (powers of entry and seizure) on persons authorised by the Secretary of State or a waste regulation authority;”;
 - (f) in paragraph (e), for “authorities under the regulations” substitute “waste regulation authorities”;
 - (g) after paragraph (f) insert—
 - “(fa) make provision authorising the disclosure of information by Officers of Revenue and Customs to waste regulation authorities;
 - (fb) confer, on persons designated as general customs officials under section 3(1) of the Borders, Citizenship and Immigration Act 2009, functions relating to the seizure and detention of waste that has arrived at, or entered into, the United Kingdom or is to leave the United Kingdom;”;
 - (h) after paragraph (g) insert—
 - “(h) make provision for, about or connected with the imposition of civil sanctions.”
- (7) After subsection (5A) insert—
- “(5B) For the purposes of this section “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).
- (5C) The regulations may make provision for, about or connected with the imposition of a sanction of that kind whether or not—
- (a) the conduct in respect of which the sanction is imposed constitutes an offence, or
 - (b) the person imposing it is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.
- (5D) Regulations under this section may make provision in relation to any area of sea or seabed or its subsoil within the seaward limits of—

Status: This is the original version (as it was originally enacted).

- (a) the area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (designation of continental shelf), or
- (b) the area designated by Order in Council under section 41(3) of the Marine and Coastal Access Act 2009 (designation of exclusive economic zone).

(5E) Regulations under this section may make consequential, supplementary, incidental, transitional or saving provision, including provision amending, repealing or revoking primary legislation or retained direct EU legislation.”

(8) In subsection (6), at the appropriate places insert—

““exportation”, in relation to waste, means causing it to leave the United Kingdom;”;

““importation”, in relation to waste, means causing it to arrive at, or enter into, the United Kingdom;”;

““primary legislation” means—

- (a) an Act of Parliament,
- (b) a Measure or Act of Senedd Cymru,
- (c) an Act of the Scottish Parliament, or
- (d) Northern Ireland legislation;”;

““transit of waste for export” means the transportation or keeping of waste, that has arrived at, or has entered, the United Kingdom, for the purpose of facilitating its leaving the United Kingdom;”.

(9) In section 160A(2) of the Environmental Protection Act 1990 (regulations and orders) (as inserted by section 63), in the Table, at the appropriate place insert—

“section 141 (imports, exports and transit of waste)

regulations that—

- (a) confer powers of entry, seizure or detention in circumstances where there is no such power under existing regulations under section 141,
- (b) provide for the charging of fees or charges that are not chargeable under existing regulations under that section,
- (c) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations under that section,
- (d) increase the maximum penalty for a criminal offence under existing regulations under that section,
- (e) provide for conduct to be subject to a civil sanction (within the meaning given by section 141(5B)) which is not subject to a civil sanction under existing regulations under that section, or
- (f) amend, repeal or revoke a provision contained in primary legislation (within the meaning given by section 141(6)) or retained direct principal EU legislation.”

(10) In section 41 of the Environment Act 1995 (power to make schemes imposing charges)

Status: This is the original version (as it was originally enacted).

- (a) in subsection (1), for paragraph (d) substitute—
- “(d) as a means of recovering costs incurred by it in performing functions in connection with the regulation of the importation or exportation of waste or the transit of waste for export, the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;”;

- (b) after subsection (1) insert—

“(1A) In paragraph (d) of subsection (1) “importation”, “exportation”, “transit of waste for export” and “waste” have the meaning they have in section 141 of the Environmental Protection Act 1990.”

- (11) In regulation 46 of the Transfrontier Shipment of Waste Regulations 2007 ([S.I. 2007/1711](#)), omit paragraph (1).

63 Regulations under the Environmental Protection Act 1990

- (1) The Environmental Protection Act 1990 is amended as follows.

- (2) After section 160 insert—

“160A Regulations and orders

- (1) Regulations and orders under this Act are subject to the negative procedure, other than—
- (a) regulations or orders subject to the affirmative procedure by virtue of subsection (2);
 - (b) regulations made by a Northern Ireland department under section 156 (power to give effect to retained EU obligations and international obligations);
 - (c) an order under section 164(3) (commencement);
 - (d) an order under paragraph 4 of Schedule 3 (statutory nuisance).
- (2) Regulations or orders made under a section listed in the first column of the following Table that are of the description specified in the second column are subject to the affirmative procedure—

<i>Section</i>	<i>Description of regulations or orders</i>
34D (prohibition on disposal of food waste to sewer: Wales)	any regulations under that section.
45AA(10) (separate collection of waste: Wales)	any regulations under that section.
78M(4) (offences of not complying with a remediation notice)	any order under that section.
79(1ZA) (statutory nuisance)	any regulations under that section.
80ZA(11) (fixed penalty notices)	any regulations under that section.
88A (litter from vehicles: England)	regulations that include provision falling within section 88A(3)(a) or (6).

- (3) Regulations and orders made under this Act by the Secretary of State or the Welsh Ministers are to be made by statutory instrument, other than an order under paragraph 4 of Schedule 3.
 - (4) Where regulations or orders under this Act made or to be made by the Secretary of State—
 - (a) are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament;
 - (b) are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
 - (5) Where regulations or orders under this Act made or to be made by the Welsh Ministers—
 - (a) are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of Senedd Cymru;
 - (b) are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru.
 - (6) See sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)) for the meaning of “the negative procedure” and “the affirmative procedure” in relation to regulations or orders under this Act made or to be made by the Scottish Ministers.
 - (7) Any provision that may be made by regulations or order under this Act subject to the negative procedure may be made subject to the affirmative procedure.”
- (3) In section 45B omit subsection (3).
 - (4) In section 78M omit subsection (7).
 - (5) In section 161 (regulations, orders and directions)—
 - (a) for the heading substitute “Directions”;
 - (b) omit subsections (1) to (4).