

The Waste (England and Wales) Regulations 2011

Department for Environment, Food and Rural Affairs RPC

rating: **fit for purpose**

Description of proposal

The Waste Regulations 2011 transpose several aspects of the revised Waste Framework Directive (WFD). The Regulations also cover the registration of waste Carriers, Brokers and Dealers (CBDs), extending the requirement of registration to all those who carry waste, even if it is not their sole or principal activity. This followed a judgment made by the European Court of Justice (ECJ) in 2005 on the WFD. The 2011 Waste Regulations also amended the Hazardous Waste Regulations 2005. However, the Department has decided not to review these amendments under this review, as it would be more efficient to assess these with the future review of the Hazardous Waste Regulations 2005, which is due in 2021.

The aim of the 2011 Waste Regulations was to reduce the adverse impacts of the generation of waste and resource use on human health and the environment. Specifically, the following elements were covered within the regulations:

1. **Waste Management Plans:** For the Government to revise the scope and content of waste management plans;
2. **Waste Prevention Programmes:** For the Government to establish waste prevention programmes;
3. **Waste Hierarchy:** For organisations to apply the waste hierarchy guidance to create a priority order at the point of waste transfer;
4. **Household recycling target:** For at least 50% by weight of waste from households to be prepared for re-use or recycled by 2020; and for the Government to specify measures in the Waste Management Plan to achieve this target;
5. **Separate recycling collections:** For waste collectors to collect paper, metal, plastic and glass separately from each other and other waste materials –

where necessary for quality reasons to ensure recovery¹, and where technically, environmentally and economically practicable (TEEP);

6. **Construction waste recovery target:** For at least 70% by weight of nonhazardous construction and demolition waste to be subjected to material recovery by 2020; and for the Government to specify measures in its Waste Management Plan to achieve this target;
7. **Waste infrastructure:** For local authorities to apply the self-sufficiency & proximity guidance for waste catchment areas, to create an integrated and adequate network of installations for waste disposal and for the recovery of mixed municipal waste from household waste;
8. **Carrier registration:** For all waste carriers, brokers and dealers (CBDs) to register with the Environment Agency (EA); and
9. **Waste transfer information:** For organisations to record and retain specific information about waste and its movement, upon its transfer.

The Department explains that the need for a statutory review was triggered by the inclusion of a clause in the 2012 amendments to the Regulations. The Department did not produce an Impact Assessment (IA) for the 2011 Regulations as it did not, following advice and guidance, believe it to be proportionate to do so. In establishing the scope of the review the Department has explained that, in the absence of an IA on the Regulations, it has extracted the costs relating to the Regulations from the WFD IA. The Department believes it has taken a proportionate approach in not widening the review's scope to cover all aspects of the WFD, particularly as the Directive contained no requirement to do so.

Impacts of proposal

The Department explains that the Regulations contain a number of time specific objectives for elements 2, 4, 5 and 6. All other objectives are ongoing and not time specific. The Department provides a table to show the progress made against all the

¹ necessary to ensure that waste undergoes recovery operations in accordance with Article 4 and 13 of the WFD and to facilitate or improve recovery

objectives. Elements 1, 2 and 6 have been achieved, while the rest are still progressing towards achievement of their respective objectives.

The Department decided to undertake a 'light touch' approach to the review for a combination of reasons including:

- The fact that ongoing costs, as opposed to transition costs, were expected to be relatively low, as was the spend per individual business;
- The fact that the Regulations and their implementation have been reviewed and amended on an ongoing basis via two red tape challenges as well as several, Defra and EA reviews since they were introduced.

The Department provides detail of the original impacts, taken from the WFD IA, on elements 3 and 8: Waste Hierarchy and CBD registration. For the former element estimates were provided for a one-off cost to businesses of up to £38.4m and ongoing costs of up to £4.6m for new businesses. Estimates for CBDs to register with the Environment Agency (EA) incurred one-off costs up to £11.5m and ongoing costs of up to £1.4m for new businesses. The remainder of the elements were considered to provide either no or very low transitional costs to business.

The Department explains that in order to review the impacts on business, it undertook a series of 20 interviews with stakeholders (table 1), supported by evidence from reports and reviews. The conclusion was that no new quantitative data was identified to change the original estimates and that no individual regulation was considered particularly burdensome to business. However, a series of suggestions were made by stakeholders to help meet the long term objective to reduce the adverse impacts of the generation of waste and on human health and the environment. Specifically, stakeholders called for:

- A more holistic view of waste in terms of resource efficiency and resource security, and integration of waste and resource-related plans with other Government plans and strategies;
- Early communication from Government on policy direction to provide industry and local authorities with adequate time to develop infrastructure and services;
- More collaboration between policy makers, manufacturers, environmental companies, local authorities, re-processors and the rest of the industry around policy, strategy, technology, services and infrastructure design;

- Improved monitoring and evaluation, taking into account social and economic impacts and ensuring a common standard for reporting internationally to create a level playing field.
- Identifying alternative ways to move waste up the hierarchy, by stimulating the market and shifting responsibility to the manufacturer for environmental impacts of their products over their lifetime.
- Redesign of the CBD registration system in order to drive poor performance out of the industry

The Department also compared the implementation of the WFD in other member states, seeking stakeholder views to support their findings. With the exception of the recycling rate calculation method for the household recycling target the conclusion was that there was no evidence of over-implementation of the requirements in the UK.

Quality of submission

The RPC finds it disappointing that despite the Department engaging with stakeholders, to seek evidence of the actual impacts of the measure, it has not been able to do so for most of the elements. The RPC is concerned at the Department's decision to take a light-touch approach to a measure which appears to involve a wide range of impacts, many of which appear from stakeholders view to require further government action..While the Department has provided reasons for the approach taken, the PIR should have provided further supportive discussion on these reasons.

These Regulations are to be reviewed in 2021. Had this PIR been more complete and in particular provided a fuller assessment against the original objectives of the policy, this would have created a clear baseline, against which the 2021 review could more fully gauge the effectiveness of the measure. Given the absence of an IA for the policy, it is particularly disappointing that this opportunity to set a counterfactual was not taken.

Given that stakeholders have proposed a number of possible improvements to the existing policy, it is also disappointing that the Department has not drawn upon these to develop further policy option – either for the present PIR or the proposed full review.

That said, the Department has set out its attempts to seek relevant evidence, and has stated clearly why the data it sought were not readily available. The Department

has also provided detail, as a comparison, how the WFD has been implemented within member states. The RPC notes that under lessons to be learnt, the Department has identified that the absence of an IA on the Regulations contributed to its inability to review the actual impacts. Further to this the Department provided an additional explanation, as stated above, as to why, after receiving official guidance, an IA for the Regulations was not undertaken. The RPC believes this is regrettable and that the Department needs to consider how a future IA could set out how each of the objectives of the Directive is to be transposed, into what piece of legislation, and identify which costs relate to the Regulations and state achievements against the longer term objectives more clearly.

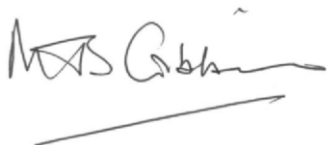
The Department explains that the Regulations will remain in place as they continue to form the UK's transposition of the WFD and there is limited scope to change them without compromising the UK's compliance with its requirements.

The PIR would have benefited from a discussion of the wider impacts from the Regulations such as on the environment.

Departmental recommendation	Retain
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RPC assessment

Is the evidence in the PIR sufficiently robust to support the departmental recommendation?	Yes
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Michael Gibbons CBE, Chairman



Department for Environment Food & Rural Affairs

Defra response to RPC assessment of PIR of Waste (England & Wales) Regulations 2011

The RPC opined on 6 December that this Post Implementation Review (PIR) report is fit for purpose, and that the evidence in the PIR is sufficiently robust to support the departmental recommendation of retaining the Regulations (see attached assessment). We appreciate RPC's feedback and would like to offer a response and additional context on some of its comments here.

The RPC suggest that a larger scale research exercise would have been preferable. Defra agrees with the RPC that more insight on environmental impacts would be useful. However, Government Better Regulation guidance was followed in designing and carrying out this PIR, and we are satisfied with the approach taken and its justification as proportionate. Attempting to quantify the extent and cumulative effect to which the various regulations are achieving their longer term objective, namely of 'reducing the adverse impacts of the generation of waste and resource use on human health and the environment', would be extremely complex, and unlikely to produce data we could have confidence in due to the numerous other factors that affect the environment and health. We therefore asked stakeholders for their views on barriers to the Regulations achieving their environmental objectives, and how they felt these longer term objectives could be better achieved. This has now been added as an annex to the report.

The RPC expressed disappointment that Defra had not drawn on the views of stakeholders expressed in this report to develop further policy options at this point in time. Defra values hearing from stakeholders, and works closely with those in the waste and resources industry on an ongoing basis; we are also extremely grateful to those that gave their time to share their views on the effectiveness of these Regulations. As the Resources & Waste Strategy is currently under development, forming new policy related to the objectives of the 2011 Waste Regulations in isolation would not be sensible. Instead, as stated in the report, the findings of this review will inform the development of that strategy and other future policy – in combination with other evidence. The report also highlighted that waste regulation has been reviewed and amended on an ongoing basis, and so there are already existing workstreams in place revisiting particular aspects of implementation which were mentioned by stakeholders. For instance, the commitments made following the Cutting Red Tape review of the waste sector are published [here](#).

The RPC found it regrettable that there is no Impact Assessment specifically for the 2011 Waste Regulations. As Defra had written an IA for the transposition of the revised EU Waste Framework Directive (rWFD) (which was transposed via various pieces of domestic legislation, including the 2011 Waste Regulations), a separate IA would have simply duplicated this work. Had the rWFD IA given more detail on calculation of ongoing costs for the various requirements, this would have sufficed for us to update this IA with actual costs for the 2011 Waste Regulations for the purposes of this PIR.