

## **Explanatory Memorandum to:**

- The Waste Separation Requirements (Wales) Regulations 2023 (the “Waste Separation Regulations”)
- The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023 (the “Incineration and Landfill Regulations”)
- The Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023 (the “Food Waste to Sewer Order”).

The aforementioned package of statutory instruments is hereafter collectively referred to as the “Workplace Recycling Regulations”.

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Group Resource and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

## **Minister’s Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of:

- The Waste Separation Requirements (Wales) Regulations 2023
- The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023
- The Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023.

I am satisfied that the benefits justify the likely costs.

**Julie James MS**  
**MINISTER FOR CLIMATE CHANGE**

**7 November 2023**

## **PART 1**

### **1 Description**

1.1 The Workplace Recycling Regulations represent a single policy reform delivered through a package of three pieces of linked subordinate legislation; the collective primary purpose of which is to increase the quantity and quality of recycling from non-domestic premises, reduce the amount of waste sent to incineration and landfill, and increase the consistency of how we collect and manage recycling in Wales.

#### ***The Waste Separation Requirements (Wales) Regulations 2023***

1.2 The Waste Separation Regulations set out the separation requirements for the presentation, collection and handling of waste from non-domestic premises in Wales for the purposes of section 45AA of the Environmental Protection Act 1990. This to ensure that waste is managed in a manner that promotes high quality recycling.

1.3 The Waste Separation Regulations require all non-domestic premises to present their recyclable waste for collection in specified streams for recycling. Those who collect or arrange for the collection of waste from non-domestic premises will be correspondingly required to collect the specified waste streams separately for recycling and not subsequently mix them.

1.4 The nine specified recyclable waste materials that need to be presented for collection separately, collected separately, and kept separate after collection in six separate recyclable waste streams (as a minimum) are:

- glass;
- cartons and similar<sup>1</sup>, metal and plastic;
- paper and card;
- food waste (for premises producing 5 kilogrammes or more of food waste in seven consecutive days);
- unsold small waste electrical and electronic equipment (“sWEEE”); and
- unsold textiles.

1.5 The waste sub-fractions within each of the recyclable waste streams that are subject to the separation requirements are set out in Schedule 1 to the Waste Separation Regulations.

1.6 The separation requirements apply in respect of all premises other than domestic properties and caravans. There are limited exemptions which are set out in the Waste Separation Regulations as follows:

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<sup>1</sup> “cartons and similar” means fibre-based composite packaging, being packaging material which is made of paperboard or paper fibres, laminated with low density polythene or polypropylene plastic, and which may also have layers of other materials, to form a single unit that cannot be separated by hand

- Hospitals are not required to present waste separately for collection until 6 April 2026;
- Food waste from premises that produce less than 5 kilogrammes of food waste in seven consecutive days does not need to be separated out for recycling;
- Controlled waste collected by Local Authorities in respect of their duties to ensure that relevant highways and relevant land are, so far as is practicable, kept clear from litter and refuse; and
- Animal by-products comprising Category 1 material as listed in Article 8, or Category 2 material as listed in Article 9, of Regulation (EC) No 1069/2009 must not be placed in the food waste stream and should instead be disposed of in accordance with the relevant animal by-products legislation.
- Food waste within its original packaging may be presented for collection within the food waste recyclable waste stream, provided that it is not reasonably practicable for the occupier to separate the food waste from its original packaging and that waste will be taken to and processed at a facility for preparation for re-use, or recycling.

1.7 In order to provide practical guidance on how to comply with the Waste Separation Regulations, the ‘Separate Collection of Waste Materials for Recycling: a Code of Practice for Wales’ (“the Code”) will be published under section 45AB of the Environmental Protection Act 1990 shortly after the Waste Separation Regulations are made.

***The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023***

1.8 The Incineration and Landfill Regulations prohibit the incineration, or the deposit in landfill, of specified types of separately collected recyclable waste. This will ensure that waste that is presented and collected separately in accordance with the Waste Separation Regulations is recycled as intended.

1.9 The types of waste are:

- food;
- small waste electrical and electronic equipment;
- card;
- cartons; and
- certain textiles (unsold textiles will be prohibited from incineration, all textiles will be prohibited from landfill).

1.10 In addition to this there will be a prohibition on the deposit in landfill of any wood waste (whether or not separately collected).

1.11 The Incineration and Landfill Regulations expand on the changes implemented by the Waste (Circular Economy) (Amendment) Regulations 2020 which amended the Environmental Permitting (England and Wales)

Regulations 2016 to ban the following separately collected materials from incineration and landfill:

- glass;
- plastic;
- metal; and
- paper.

- 1.12 The new prohibition is achieved by adding the additional specified types of waste to provisions in the Environmental Permitting (England and Wales) Regulations 2016 under which conditions are deemed to be contained in every environmental permit, which authorises a landfill, small waste incineration plant, waste co-incineration plant or waste incineration plant.
- 1.13 The relevant condition is that the operator of such a facility must not accept specified types of waste for incineration or landfill if that waste has been separately collected for the purpose of preparing for re-use or recycling.

### ***The Prohibition on Disposal of Food Waste to Sewer (Wales) Order 2023***

- 1.14 The Food Waste to Sewer Order makes provision in relation to the prohibition on the disposal of food waste to sewer under section 34D of the Environmental Protection Act 1990, which will be commenced by the Environment (Wales) Act 2016 (Commencement No. 4) Order 2023 by introducing civil sanctions and investigative powers in relation to offences under that section.
- 1.15 This will ensure that workplaces do not install technologies to facilitate the disposal of food waste to sewer as a way to circumvent the requirement to separate food waste for recycling. It will also stop non-domestic premises currently disposing of their food waste in this way when the Food Waste to Sewer Order comes into force.
- 1.16 Disposing of food waste direct to sewer can overload the sewerage system, cause blockages and leads to the loss of valuable energy recovery and nutrients.

### ***Civil Sanctions***

- 1.17 The Waste Separation Regulations, the Incineration and Landfill Regulations and the Food Waste to Sewer Order each introduce a civil sanctions regime to enable the regulator to impose fixed monetary penalties, variable monetary penalties and non-compliance penalties in relation to criminal offences associated with the Workplace Recycling Regulations.
- 1.18 The regulator for the purposes of the Waste Separation Regulations is Natural Resources Wales (“NRW”). The regulator for the Incineration and Landfill Regulations is NRW, except in respect of small waste incineration

plants where the Local Authority in the area in which the relevant plant is situated is the regulator. The regulator for the purposes of the Food Waste to Sewer Order is the Local Authority in the area in which the premises is situated.

## **2 Matters of special interest to the Legislation, Justice and Constitution Committee**

- 2.1 The Incineration and Landfill Regulations operate by deeming that all environmental permits issued under the Environmental Permitting (England and Wales) Regulations 2016, which authorise a landfill or incineration plant, contain a condition prohibiting the landfill or incineration (as applicable) of the specified separately collected waste materials. This condition will apply to all environmental permits including those issued prior to the making of the Incineration and Landfill Regulations, as a result of which the provisions could be interpreted as having a retrospective effect to the extent that they affect past events or transactions. That is, they modify the terms of environmental permits issued before the Incineration and Landfill Regulations come into force, albeit offences associated with the new permit conditions can only be committed after the Incineration and Landfill Regulations have come into force.
- 2.2 The Environment (Wales) Act 2016 (Commencement No. 4) Order 2023 (“Commencement Order”) brings section 34D of Environmental Protection Act 1990 into force on 6 April 2024. The offence in section 34D will not be in force at the point the Food Waste to Sewer Order is made, however section 68(1) of the Environment (Wales) Act 2016 ensures that the order-making powers in the Regulatory Enforcement and Sanctions Act 2008 are available to the Welsh Ministers in advance of this. In addition to this, the coming into force date for section 34D under the Commencement Order ensures that will be in force at the point the Food Waste to Sewer Order comes into force.

## **3. Legislative background**

### ***The Waste Separation Requirements (Wales) Regulations 2023***

- 3.1 Part 4 of the Environment (Wales) Act 2016 inserts sections 45AA and 45AB into the Environmental Protection Act 1990 (“1990 Act”). Section 45AA contains regulation-making powers for the Welsh Ministers to create ‘separation requirements’ relating to the duties contained in section 45AA(1), (2) and (4). Section 45AA(10) allows the Welsh Ministers to create exceptions to the duties in section 45AA(1), (2) and (4).
- 3.2 Section 2 of the Pollution Prevention and Control Act 1999 (“1999 Act”) gives the Welsh Ministers the power to make regulations to make consequential amendments to the 1990 Act and the Waste (England and Wales) Regulations 2011. Functions of the Secretary of State under the 1999 Act were transferred to the National Assembly for Wales, by virtue of article 3(1) of the National Assembly for Wales (Transfer of Functions)

Order 2005. Functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006. These amendments ensure that the separation requirements under section 45AA are properly integrated into the existing waste regime.

- 3.3 Sections 36(2), 39, 42, 45 and 52 to 55 of the Regulatory Enforcement and Sanctions Act 2008 (“RESA 2008”) give the Welsh Ministers power to create a civil sanctions regime in respect of offences contained in enactments set out in Schedule 6 to the RESA 2008. This includes offences under Part 2 of the 1990 Act, which includes section 45AA.
- 3.4 The power contained in RESA 2008 is an order-making power, whilst the powers in the 1990 Act and the 1999 Act are regulation-making powers. Section 39 of the Legislation (Wales) Act 2019 provides that where the Welsh Ministers have a power or duty to make subordinate legislation in the form of regulations, rules or an order made by statutory instrument, they may exercise the power or duty by making the subordinate legislation in any other of those forms by statutory instrument.
- 3.5 Regulations made under section 45AA are subject to the affirmative procedure by virtue of section 160A(2) and (5) of the 1990 Act, section 2(8) of the 1999 Act and section 61(2) of RESA 2008.

***The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023***

- 3.6 Part 4 of the Environment (Wales) Act 2016 inserts section 9A into the Waste (Wales) Measure 2010. Section 9A, together with section 9, give the Welsh Ministers regulation-making powers in connection with prohibiting or otherwise regulating the deposit in landfill or incineration of specified kinds of waste in Wales. These include, but are not limited to, the power to amend regulations made under section 2 of the 1999 Act.
- 3.7 Sections 39, 42, 52 to 55 and 62(2) of RESA 2008 give the Welsh Ministers the power to create a civil sanctions regime in respect of offences contained in subordinate legislation made pursuant to enactments contained in Schedule 7 to RESA 2008. This includes offences contained in subordinate legislation made under section 2 of the 1999 Act, which includes the Environmental Permitting (England and Wales) Regulations 2016.
- 3.8 As the offence to which the civil sanctions regime is being applied was made under section 2 of the 1999 Act, the Incineration and Landfill Regulations cite this power as the order-making power under section 62(2) of RESA 2008 is dependent on a corresponding offence-creating power. Functions of the Secretary of State under the 1999 Act were transferred to the National Assembly for Wales, by virtue of article 3(1) of the National Assembly for Wales (Transfer of Functions) Order 2005. Functions of the National Assembly for Wales were transferred to the

Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

- 3.9 The power contained in RESA 2008 is an order-making power, whilst the powers in the 1990 Act and the 1999 Act are regulation-making powers. Section 39 of the Legislation (Wales) Act 2019 provides that where the Welsh Ministers have a power or duty to make subordinate legislation in the form of regulations, rules or an order made by statutory instrument, they may exercise the power or duty by making the subordinate legislation in any other of those forms by statutory instrument.
- 3.10 The Incineration and Landfill Regulations are subject to the affirmative procedure by virtue of section 2(8) of the 1999 Act, section 62(3) of RESA 2008 and section 20(3) of the Waste (Wales) Measure 2010.

### ***The Prohibition on Disposal of Food Waste to Sewer (Wales) Order 2023***

- 3.11 Part 4 of the Environment (Wales) Act 2016 inserts section 34D into the 1990 Act. The Food Waste to Sewer Order does not rely on any of the regulation-making powers contained in section 34D.
- 3.12 Sections 36(2), 39, 42, 45 and 52 to 55 of RESA 2008 give the Welsh Ministers power to create a civil sanctions regime in respect of offences contained in enactments set out in Schedule 6 to the 2008 Act. This includes offences under Part 2 of the 1990 Act, which includes section 34D.
- 3.13 Section 55(3) of RESA 2008 includes a power for Orders under RESA 2008 to confer powers of entry, search or seizure.
- 3.14 The Food Waste to Sewer Order is subject to the affirmative procedure by virtue of section 61(2) of RESA 2008.

## **4. Purpose and intended effect of the legislation**

- 4.1 The purpose of the Workplace Recycling Regulations is to increase the quality and quantity of recyclable materials collected from non-domestic premises and reduce the amount of recyclable waste going to landfill and incineration. They will also improve consistency of how waste is collected and managed by aligning collections from non-domestic premises with the way waste is collected from households across the majority of Wales, thereby reducing confusion for citizens.
- 4.2 The Waste Separation Regulations and Food Waste to Sewer Order apply in respect of all premises other than domestic properties and caravans; including every business, public and third sector premises in Wales. The separation requirements also apply to waste and recycling collectors and processors who manage waste collected from non-domestic premises. There are limited exceptions, which are set out in the Waste Separation Regulations and explained in paragraph 1.6.

- 4.3 The Workplace Recycling Regulations will build on the successful reform of household recycling, where the high rate of recycling in Wales saves around 400,000 tonnes of carbon per annum and provides important materials back into the economy. Rolling out the approach to Wales' workplaces will help mitigate the climate and nature emergency and accelerate progress towards a stronger, greener economy.
- 4.4 The Workplace Recycling Regulations will help to deliver Wales' commitments to reach zero landfill by 2025, and zero waste and net zero carbon emissions by 2050. The modelling conducted for the Regulatory Impact Assessment ("RIA") confirms that introducing the Workplace Recycling Regulations will lead to significant savings for the Welsh economy and environment and that the preferred policy option being implemented via the Workplace Recycling Regulations yields the highest overall benefits (total cost). The reforms will produce overall reductions in CO<sub>2</sub> equivalent and NO<sub>2</sub> emissions of -1,298,000 tonnes CO<sub>2</sub> and -5,200 tonnes NO<sub>2</sub> compared to baseline<sup>2</sup>.
- 4.5 The Workplace Recycling Regulations will support Wales' progress towards a circular economy, where resources are kept in use for as long as possible, waste is avoided, and materials are recovered and regenerated at the end of their life. Consumption and associated waste is a key contributor to the emissions heating the planet, the decline in biodiversity and is also detrimental to public health.
- 4.6 Keeping recyclable materials separate will result in capturing higher quality recyclate, which is more likely to be used in manufacturing operations. With the cost of materials contributing to the rising cost-of-living, more effectively keeping high quality recycled materials in the Welsh economy will improve resource efficiency, whilst improving material security and resilience of supply chains and reducing reliance on the extraction of primary resources.
- 4.7 On a macroeconomic level, these reforms should result in the following benefits:
- Creating opportunities for jobs and training in the waste management sector; modelling establishes that these reforms will sustain an average of 2,582 jobs in the waste management sector during the 2024-33 period<sup>3</sup>;
  - Creating overall savings to the Welsh economy through for example, supplying higher quality recyclates requiring less processing and avoiding incineration and landfill costs; overall savings to the Welsh

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<sup>2</sup> Welsh Government, Regulatory Impact of Options to Increase Workplace Recycling in Wales, 2023, [Workplace recycling | GOV.WALES](#), Table 19 and 3.92.

<sup>3</sup> Welsh Government, Regulatory Impact of Options to Increase Workplace Recycling in Wales, 2023, [Workplace recycling | GOV.WALES](#), 3.97.

economy are modelled at £186.9 million net present value (NPV) over ten years – 2024-2033<sup>4</sup>;

- Accelerating progress towards a circular economy - where materials are kept in use and waste is avoided – through Welsh manufacturing businesses making use of high quality recyclates collected in Wales;
- Providing greater security of supply of resources and supply chain resilience to the manufacturing sector, through more effectively capturing high quality material that can go back into the Welsh economy;
- Improving our environment, health and wellbeing in the short term and for future generations;
- Capturing high-quality material through the separate collection of waste is likely to support retention of material within the Welsh and UK economies – resulting in social and economic benefits in line with the objectives of the Wellbeing of Future Generations (Wales) Act 2015<sup>5</sup>; and
- Tackling the climate and nature emergency through improved resource efficiency, reduced carbon emissions and reduced reliance on extraction of primary resources - the climate and nature emergency affects everyone, but the negative impacts will be felt disproportionately by particular groups such as older people, disabled people, young people and low-income households<sup>6</sup>. The implementation of the Workplace Recycling Regulations is an essential part of alleviating the negative impacts on the most vulnerable communities in Wales.

4.8 Not implementing the Workplace Recycling Regulations would restrict Wales' ability to reach the commitment to zero landfill by 2025, and zero waste and net zero carbon emissions by 2050. Wales could also risk falling behind the other nations of the UK; Scotland already has similar regulations in force and the UK Government is currently working up similar legislation for England<sup>7</sup>.

4.9 Wales currently outperforms the other UK nations, and, according to the latest published analysis, ranks third in the world for household waste recycling. The implementation of the Workplace Recycling Regulations in

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<sup>4</sup> Welsh Government, Regulatory Impact of Options to Increase Workplace Recycling in Wales, 2023, [Workplace recycling | GOV.WALES](#), Table 41. This calculation excludes taxes, as taxes function as transfers between different entities rather than as a net overall cost – an increase in the total landfill disposals tax paid is a cost to Welsh waste producers but is an income to the Welsh Government and thus neutral within the overall costs and benefits of the system.

<sup>5</sup> Joe Papineschi, Emma Tilbrook, and Luke Emery, Eunomia, *Review of the Welsh Government Collections Blueprint* (2016), <https://www.eunomia.co.uk/reports-tools/review-of-the-welsh-government-collections-blueprint/>.

<sup>6</sup> World Health Organization Collaborating Centre on Investment for Health and Well-being and Public Health Wales, "Health and wellbeing impacts of climate change", Public Health Wales, 2021, <https://phw.nhs.wales/news/new-resource-highlights-health-impacts-of-climate-change/climate-change-infographics-english/>.

<sup>7</sup> See the Scottish Waste Regulations 2012, the Environment Bill (Scotland) 2023 and Defra's consultation on consistency of collection for England, <https://consult.defra.gov.uk/waste-and-recycling/consistency-in-household-and-business-recycling/>.

Wales will therefore consolidate our position as a global leader in recycling and reuse.

## **5 Consultation**

### *Formal consultation*

- 5.1 Collaboration with, and feedback from, stakeholders has provided integral input in defining the policy approach. This includes, most recently for example, shaping revised policy proposals on the phasing in of certain waste streams and premises (hospitals), the coming into force date and the proportionality of the enforcement regime.
- 5.2 The Workplace Recycling Regulations build on over a decade of engagement with communities and partners. The Welsh Government has engaged with a range of stakeholders on the development of source separation policy dating back to at least 2009.
- 5.3 The Welsh Government has consulted extensively on the Workplace Recycling Regulations over a number of years and has engaged continuously with stakeholders and key partners (including NRW and local government) in the development of the policy.

### **2009 - Towards Zero Waste consultation**

- 5.4 The consultation on this policy document included: *“To achieve a high level of recycling, we need to make sure that all our recyclates are separated at source so that they are clean and of high value. We aim to develop an efficient and effective collection system to separate mixed commercial and industrial waste.”*
- 5.5 A range of consultation activities were undertaken:
  - Three consultation events took place across Wales, with stakeholders from the public, private and voluntary / third sectors participating;
  - A targeted consultation for young people; and
  - A formal public consultation open to all members of the public.
- 5.6 Feedback influenced the final [Towards Zero Waste](#) strategy document, indicating strong public support for the overall goals and the need for waste reduction as a priority action.

### **2013-2014 - Environment Bill White Paper consultation**

- 5.7 Waste separation and collection requirements were consulted on in a 12-week long Environment Bill White paper consultation through:
  - Four regional consultation events held for the public;
  - Stakeholder workshops including representatives from the Council for Economic Renewal and Commerce Wales, the Wales Environmental

Services Association, Federation of Small Businesses, Confederation of British Industries, Association of Convenience Stores, and the Wales Retail Consortium / British Retail Consortium;

- Formal online public consultation open to all; and
- One-to-one meetings with many interested parties including NRW, the Welsh Local Government Association (WLGA), the Climate Change Commission, Wildlife Trusts, Dwr Cymru and the National Park Authorities.

5.8 68% of respondents supported the following five proposed measures:

- Extending the requirement for separate collection to include further materials;
- Introducing a requirement for the separation of waste by waste producers other than households;
- Banning energy from waste for key materials;
- Banning key materials from landfill; and
- Banning the disposal of food waste to sewer.

5.9 These responses helped inform the development of the Environment (Wales) Act 2016, which includes powers being used to make the Workplace Recycling Regulations.

#### **2019-2020 - Consultation on [Beyond Recycling, the Circular Economy Strategy for Wales](#)**

5.10 This consultation included the following objectives: *“To promote higher recycling of business and public sector waste, our aim is to require recycling in all non-domestic settings, separating waste in the way households already do...” and “We will legislate to ensure that separated key recyclables are banned from energy recovery or landfill.”*

5.11 The following engagement activities took place to help inform development of the strategy:

- Approximately 40 face-to-face events, including open invitation sessions and regional events tailored to specific audiences which included young people, Local Authorities, businesses, the waste sector, environmental groups, regulators and academics; and
- A formal online public consultation.

#### **2019 Consultation on [Increasing Business Recycling in Wales](#)**

5.12 A formal 12-week consultation in late 2019 sought input on proposed 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 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; and
- Provide for civil sanctions to be available in relation to criminal offences associated with the above requirements.

5.13 A total of 100 responses were received from 96 different organisations including businesses, individuals, Local Authorities, NGOs, and trade associations. This consultation directly informed the development of the Workplace Recycling Regulations.

### **2020-2023 - Consultations on Workplace Recycling**

5.14 Between 2020 and 2023 the Welsh Government conducted face-to-face meetings with a range of stakeholders; and five public consultation events with a range of sectors including the voluntary and community sector, businesses, local government, and the wider public sector on the approach. Additionally, a formal online public consultation on both the draft Code and the enforcement proposals was conducted.

5.15 Consultations on the draft Code on how to meet the waste separation requirements and proposals for enforcing the Workplace Recycling Regulations were published on 23 November 2022 and closed on 15 February 2023. The purpose of these consultations was to seek views on the detail of the draft Code and the practical guidance it provides on how to meet the separation requirements; the proposed phasing in of certain waste streams; and proposals for enforcing the regulations.

5.16 As the Workplace Recycling Regulations represent a significant contribution to climate action and a commitment within *Net Zero Wales*, the two consultations were launched during Wales Climate Week. The responses to the consultations were then used to inform the final drafting of the Code and the proposed statutory instruments.

5.17 The summary of responses documents provide an overview of the responses received to the public consultations held between November 2022 and February 2023 on the draft Code ([Separate collection of waste materials for recycling: a code of practice for Wales](#)) and proposed enforcement and sanctions approach ([Proposals for enforcing business, public and third sector recycling regulations in Wales](#)). The Welsh Government received 39 responses to the enforcement and sanctions consultation and 95 responses to the consultation on the Code.

5.18 A [Written Ministerial Statement](#) was issued on the 20 July 2023 confirming the final policy positions on the proposals consulted upon.

**August-September 2023 – Consultation on the interaction of sections 45AA, 46 and 47 of the Environmental Protection Act 1990**

5.19 The Welsh Government also conducted an additional targeted four-week consultation with Local Authorities, the WLGA and NRW in August 2023. Its purpose was to seek views on a proposed amendment to section 46 and section 47 of the Environmental Protection Act 1990 to clarify the position where there is a conflict or overlap between requirements imposed by notices made under sections 46 or 47 of the 1990 Act and the duties regarding separate presentation of waste under section 45AA of the 1990 Act. The policy proposal was that the duties under section 45AA will take precedence where an overlap or conflict arises. Respondents overwhelmingly agreed with the proposed amendment.

*Future consultation and engagement*

5.20 The Welsh Government and partners will continue engagement activities with key stakeholders, such as workplace and waste sector representative bodies and regulators, during the implementation phase.

*Duty to consult*

***The Waste Separation Requirements (Wales) Regulations 2023***

5.21 There are no statutory consultation requirements in section 45AA of the 1990 Act for the purpose of making regulations under that section.

5.22 Under section 2(4) of the 1999 Act the Welsh Ministers must consult (a) Natural Resources Wales (b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they may consider appropriate and (c) such other bodies or persons as they may consider appropriate.

5.23 Under section 60 of RESA 2008 the Welsh Ministers must consult (a) the regulator to which the regulations relate (b) such organisations as appear to the relevant authority to be representative of persons substantially affected by the proposals, and (c) such other persons as the relevant authority considers appropriate.

5.24 Under section 59(3) of RESA 2008 the Welsh Ministers must consult the Secretary of State before making an Order under RESA 2008.

5.25 The Code referred to at paragraph 1.7 that will accompany the Separation Requirement Regulations is subject to an obligation under section 45AB(3) of the 1990 Act under which the Welsh Ministers must consult such persons as they think appropriate before issuing a code of practice.

### ***The Prohibition on Disposal of Food Waste to Sewer (Wales) Order 202***

- 5.26 Under section 60 of RESA 2008 the Welsh Ministers must consult (a) the regulator to which the order relates (b) such organisations as appear to the relevant authority to be representative of persons substantially affected by the proposals and (c) such other persons as the relevant authority considers appropriate.
- 5.27 Under section 59(3) of RESA 2008 the Welsh Ministers must consult the Secretary of State before making an Order under RESA 2008.

### ***The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023***

- 5.28 Under section 11 of the Waste (Wales) Measure 2010 the Welsh Ministers must consult (a) Natural Resources Wales (b) each local authority (c) such persons appearing to them to be representative of the interests of persons liable to be subject to duties under the regulations as they consider appropriate and (d) such other persons as they consider appropriate.
- 5.29 Under section 2(4) of the 1999 Act the Welsh Ministers must consult (a) Natural Resources Wales (b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they may consider appropriate and (c) such other bodies or persons as they may consider appropriate.
- 5.30 Under section 60 of RESA 2008 the Welsh Ministers must consult (a) the regulator to which the regulations relate (b) such organisations as appear to the relevant authority to be representative of persons substantially affected by the proposals, and (c) such other persons as the relevant authority considers appropriate.
- 5.31 Under section 59(3) of RESA 2008 the Welsh Ministers must consult the Secretary of State before making an Order under RESA 2008.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Options**

- 6.1 The Welsh Government commissioned an independent regulatory assessment of costs, benefits and risks associated with alternative policy options to inform the Workplace Recycling Regulations - Regulatory Impact Assessment (“RIA”)<sup>8</sup>.

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<sup>8</sup> Welsh Government, Regulatory Impact of Options to Increase Workplace Recycling in Wales, 2023, [Workplace recycling | GOV.WALES](#)

6.2 The work included an assessment of the potential costs and benefits of implementing the regulatory proposals and the potential impacts on stakeholders in the public, third and private sectors. The analysis presents a best estimate of costs and benefits based on the currently available information. The considered options are as follows (with 'level of separation' referring to the extent that key recyclable materials are separated out for collection):

- Option 1: Business as usual: Rely on existing mechanisms: this is the baseline against which costs and benefits are assessed. It includes extant legislative requirements (for example, the requirements of the Waste (England and Wales) Regulations 2011), the Welsh Landfill Disposals Tax and a deposit return scheme (DRS) commencing in 2025
- Option 2: Low Level of Separation, Separate Collection, Ban on the Disposal of Food Waste to Sewer, Ban on Specified Kinds of Waste to Incineration and Landfill
- Option 3: Moderate Level of Separation, Separate Collection, Ban on the Disposal of Food Waste to Sewer, Ban on Specified Kinds of Waste to Incineration and Landfill
- Option 4: High Level of Separation, Separate Collection, Ban on the Disposal of Food Waste to Sewer, Ban on Specified Kinds of Waste to Incineration and Landfill.

6.3 The options analysed in the RIA do not quantify the impact of each of the statutory instruments separately but, rather, take them as a package. The reason for this is that Options 2,3 and 4 differ only in requirements relating to the level of separation. The ban on food waste to sewer and bans on specified separately collected recyclable materials from incineration and landfill are uniformly applied to each of the policy options. They serve as an additional backstop to further increase the successful implementation of the policy but will have a proportionally lower impact on the Welsh economy.

6.4 The costs and benefits for each of the options set out in the RIA have been assessed relative to a baseline "business as usual" scenario that reflects the current situation, including Landfill Disposals Tax and current and planned legislative requirements. The 2023 modelling confirms that introducing the Workplace Recycling Regulations will lead to significant savings for the Welsh economy and environmental benefits. It also shows that the policy option preferred by the Welsh Government in 2019 (Option 3) yields the highest overall benefits.

## **6 Costs and benefits**

6.1 The 2023 modelling confirms that the increased recycling from the introduction of the Workplace Recycling Regulations will lead to significant

cost-savings overall and environmental benefits in Wales and increased employment and investment in the waste management sector. Option 3 – namely a moderate level of separation, separate collection, ban on the disposal of food waste to sewer, and ban on specified kinds of waste to incineration and landfill - yields the highest overall benefits (lowest total cost) (Table 1).

- 6.2 The reforms are expected to supply higher quantity and quality of recycle, requiring less processing and disposal costs, thus securing higher income from sale of higher quality materials and reducing landfilling costs. Moreover, high quality recycle is more likely to be used in higher value manufacturing processes, additionally producing greater environmental benefits.
- 6.3 Overall, Option 3 is expected to deliver total savings relative to the baseline of £186.9 million net present value (NPV) over ten years – 2024-2033<sup>9</sup>. The net benefit associated with the implementation of Option 3 is about twice the size of Option 2 (£92.7 million). Option 4 could bring about additional costs relative to the business-as-usual scenario.

Table 1: Summary of Options – Main Impacts

Impact types	Option 1	Option 2		Option 3		Option 4	
	Impact	Impact	Relative to Option 1	Impact	Relative to Option 1	Impact	Relative to Option 1
CO <sub>2</sub> e (M tonnes)	1.8	0.8	-1.0	0.5	-1.3	0.6	-1.3
NO <sub>2</sub> (tonnes)	3,665	517	-3,148	-1,559	-5,224	-1,044	-4,709
Recycling (M tonnes)	6.13	8.41	2.27	8.45	2.31	8.36	2.23
Environmental NPV (£M)	£227.9	£210.1	-£17.8	£106.0	-£121.9	£116.3	-£111.6
<b>Total cost* (£M)</b>	<b>£1,914.8</b>	<b>£1,822.0</b>	<b>-£92.7</b>	<b>£1,727.9</b>	<b>-£186.9</b>	<b>£2,176.2</b>	<b>£261.4</b>

\*Excludes Landfill Disposals Tax and Fuel Duty

Source: RIA (2023)

- 6.4 The modelling indicates that Option 3 will generate the highest environmental benefits, understood as the lowest environmental costs (Table 1). It forecasts the largest increase in recycling compared to other options, which translates into the greatest CO<sub>2</sub>e emissions and NO<sub>2</sub> pollution reductions. Overall, Option 3 is estimated to bring about £121.9 million of environmental impact cost savings between 2024 and 2033

<sup>9</sup> This calculation excludes taxes, as taxes function as transfers between different entities rather than as a net overall cost – an increase in the total landfill disposals tax paid is a cost to Welsh waste producers but is an income to the Welsh Government and thus neutral within the overall costs and benefits of the system.

relative to the baseline (Option 1), compared to only £17.8 million in Option 2 and £111.6 million in Option 4.

- 6.5 It is predicted that the introduction of the Workplace Recycling Regulations will lead to increased employment in the waste management sector. The 2023 modelling predicted that the preferred Option 3 would sustain an average of 2,582 jobs in the sector during the period 2024-33, 784 jobs more than in the baseline scenario and 311 more than in Option 2 (Table 2). Introducing Option 4 would yield the highest employment benefits, but other economic and environmental impacts (described above) make Option 3 more beneficial for Wales.

Table 2: Summary of Options – Employment impacts (jobs)

Impact types	Option 1	Option 2		Option 3		Option 4	
	Impact	Impact	Relative to Option 1	Impact	Relative to Option 1	Impact	Relative to Option 1
Employment (jobs)	1,798	2,272	+473	2,582	+784	2,923	+1,125

Source: RIA (2023)

- 6.6 The 2023 modelling shows that the separation requirements enforced in line with Option 3 will give rise to savings above the baseline for workplaces with 5 and more employees. The size threshold at which workplaces are expected to experience cost-savings under Options 2 and 4 is 10+ employees (Table 3). The modelling indicates that, under Option 3, workplaces with 0-4 employees might incur an additional cost of around £11.40 per week for complying with the regulations whilst workplaces with 250+ employees might expect as much as £492.50 in weekly savings. This pattern arises because the administrative costs incurred by local units of different sizes are similar, but large local units make bigger savings due to reduced waste management disposal costs over a greater quantity of waste, but that cost does not factor in the steps that can be taken to reduce costs by improving resource efficiency.
- 6.7 The costs shown for smaller local units assume that they occupy their own individual premises and contract individually for waste collection services. In some cases, micro-sized workplaces will occupy shared spaces where waste is managed centrally and will incur lower costs than those modelled.
- 6.8 The Welsh Government is bringing in ways to address compliance barriers and to mitigate the costs that the policy might impose on micro-sized workplaces. Measures include:
- support tools, direct consultation and training support;
  - advice on collaborative procurement projects to create waste management saving opportunities for waste producers in the same geographic area;

- encouraging Local Authorities to consider providing co-collection services to micro-sized waste producers situated within or close to residential areas;
- encouraging Local Authorities to consider providing more recycling centres as drop off sites (or bring sites) for non-domestic waste (*with a charge applied*); and
- other planned and potential financial incentives.

Table 3: Summary of Options – Weekly Financial and Administrative Cost Impact per local unit of recycle collection (2029) (£), (negative values indicate a saving)

Regulatory scenario	Local Unit Size Band (Employees)						
	0-4	5-9	10-19	20-49	50-99	100-249	250+
Option 1 (Baseline)	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£0.00
Option 2	£5.10	£1.27	-£2.38	-£6.36	-£8.66	-£18.30	-£392.91
Option 3	£11.40	-£1.51	-£16.28	-£37.38	-£61.61	-£168.73	-£492.55
Option 4	£20.83	£10.37	-£1.01	-£20.70	-£44.00	-£151.70	-£1,130.99

Source: RIA (2023)

## Other impacts

6.9 An Integrated Impact Assessment (IIA) has been undertaken, which covers all provisions in the Workplace Recycling Regulations. The IIA is available on the Welsh Government website at [Workplace recycling | GOV.WALES](#). The published sections of the IIA and a summary of the potential impacts is set out below:

### Section 1 What action is the Welsh Government considering and why?

6.10 In line with the Well-being of Future Generations (Wales) Act 2015, the Workplace Recycling Regulations are about improving the long term social, economic, environmental, and cultural well-being of Wales. Given the climate and nature emergency, the Workplace Recycling Regulations will support workplaces to take action by keeping materials in circulation, a key part of the move to a circular economy.

6.11 A circular economy moves away from single use, keeping resources in use for longer and avoiding waste. This in turn leads to reduced emissions, helps to prevent further damage to the environment and

improves supply chain resilience through the capture of high-quality materials that can be fed back into the economy.

- 6.12 Closely aligning the systems for household and workplace recycling will reduce confusion and further improve consistency for those having to implement the Workplace Recycling Regulations.

### Section 8 Conclusion

- 6.13 In line with the Welsh Government's Well-being objectives<sup>10</sup> the Workplace Recycling Regulations directly support building a greener economy based on the industries of the future and embedding our response to the climate and nature emergency in everything we do.
- 6.14 Through tackling the climate and nature emergency, these regulations will bring important environmental, economic and health benefits to people in Wales, creating a healthier Wales. For example, people will benefit from reduced carbon emissions impacting air quality. Our successful recycling story has become a point of national pride.
- 6.15 The Workplace Recycling Regulations contribute towards a more equal Wales as they bring about positive action to address the climate crisis which is anticipated to hit the most vulnerable communities hardest. It will also create a cleaner, greener and more sustainable environment with associated jobs and investment in the circular economy.

### Children's Rights Impact Assessment

- 6.16 Climate change has been identified as one of the biggest threats facing our future generations. Implementing the Workplace Recycling Regulations will have a direct positive impact on our environment, health and well-being, and the economy in the short and long term.
- 6.17 Children and young people will be directly affected as the Workplace Recycling Regulations cover schools, colleges and other places that they visit.
- 6.18 As they have done in supporting Wales' progress on recycling to date, children and young people will play a critical role in supporting Wales' commitments to reach zero waste and net zero carbon emissions by 2050, as well as supporting our progress towards a circular economy.

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<sup>10</sup> "Programme for government 2021 to 2026: Well-being statement", *Welsh Government*, 2021, <https://www.gov.wales/programme-for-government-2021-to-2026-well-being-statement.html>.

## Welsh Language Impact Assessment

6.19 The Workplace Recycling Regulations will bring important environmental, economic and health benefits to Welsh and English speakers in Wales alike. There are no foreseeable impacts on Welsh speakers or on the Welsh language. In terms of helping to improve outcomes for the language, all communication from the Welsh Government, its agents and the regulators relating to the Workplace Recycling Regulations and its implementation will be bilingual. This includes the national awareness campaign on the Workplace Recycling Regulations, and forthcoming information and tools to support non-domestic premises and the waste sector to comply.

6.20 A respondent to the recent consultation expressed concern that the regulations could reduce Welsh language use with the increased demand for private waste collectors. They noted that private waste collectors may not have the capabilities to deal with enquiries in Welsh because they are dealing with collectors/brokers based outside of Wales. However, there is no evidence to suggest that this policy will significantly change the pattern of demand for private versus Local Authority waste collection services. Occupiers of non-domestic premises will have the option of contracting with their Local Authority for the waste collection service.

## 7 Competition Assessment

- 7.1 A competition assessment has been undertaken<sup>11</sup>. The purpose of the assessment was to determine the impact of the Workplace Recycling Regulations on the competitiveness of businesses in the waste sector.
- 7.2 The competition assessment included a survey of the waste industry and interviews with manufacturers that will be affected by the food waste to sewer ban. Those participating in the competition assessment were asked forward-looking questions about how they expected their businesses to respond to the Workplace Recycling Regulations.
- 7.3 The general conclusion of the competition assessment was that even though the Workplace Recycling Regulations might have an impact on the costs for waste handlers/processors, they are not expected to have a substantial detrimental impact on competition in the Welsh waste industry. Similarly, even though the Workplace Recycling Regulations might have an impact on the ability of suppliers of technologies and consumables that facilitate the disposal of food waste to sewer to operate in the Welsh market, the same was concluded about their economic survival.
- 7.4 Consideration has also been given to the potential impact on competition due to the bans on the additional separated recyclable waste streams going to incineration and landfill. A competition filter test is provided below.
- 7.5 The main sectors likely to be affected by the introduction of the aforementioned bans are incinerators (energy from waste plants) and landfill sites in Wales.
- 7.6 On the basis of the analysis, it was concluded that a ban on separated recyclable waste going to incineration and landfill is not expected to have a significant impact on competition in Wales.
- 7.7 The bans will impact each of the landfill and incineration businesses equally. Even though landfills and incinerators are indeed expected to see incoming waste quantities reduced, such decreases are desirable and in line with the Welsh strategy to reduce residual waste to zero.
- 7.8 The impact of the Workplace Recycling Regulations on waste producers has been considered in paragraphs 6.6 - 6.8 of this Explanatory Memorandum, alongside the measures that are being put in place to mitigate any differential impacts.

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<sup>11</sup> [Increasing recycling at workplaces: assessment of effects on competitiveness | GOV.WALES.](#)

The competition filter test for the operators of landfills/incinerators in respect of the bans [landfill/incinerator]	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes/yes
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes/yes
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes/yes
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No/no
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	Yes – potentially with landfills – but zero waste to landfill by 2025 is the stated policy intention (since <i>Wise About Waste, 2010</i> ).
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No/no
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No/no
<b>Q8:</b> Is the sector characterised by rapid technological change?	No/no
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No, because it will be applied across all the operators

## 8 Post implementation review

- 8.1 There is a range of expected outcomes from the Workplace Recycling Regulations that will bring both direct and indirect benefits to Wales and further afield. They can be classified broadly into two categories:

- 1) **Primary (direct) outcomes** – principally changes in the rates and quality of recycling, incineration and landfill, and recycling collection service provision; and
- 2) **Secondary (indirect) outcomes** – wider benefits linked to increases in recycling and a reduction in incineration and landfill – for example, reduction in carbon (greenhouse gas) emissions, increased jobs creation, greater consistency in recycling collections, and higher quality recyclates as valuable resources fed back into the Welsh economy.

8.2 Monitoring activities measuring the delivery of the Workplace Recycling Regulations against the desired primary outcomes are expected to start in mid-2025. They will be reviewed at least every three years, or annually where possible, subject to data availability. The precise attribution of the regulations to the secondary outcomes may be more challenging. Thus, the Welsh Government does not commit to monitoring each of the above. The decision to monitor any specific secondary outcome will depend on a host of factors and will be made subject to specific needs and circumstances.

8.3 The primary outcomes that will be monitored are defined as follows:

1) ***The Waste Separation Requirements (Wales) Regulations 2023***

- Increased rates of recycling to meet the 70% recycling target set for 2025 for commercial waste (the most recently measured figure is 64% of commercial waste sent for recycling in 2018), and zero waste by 2050<sup>12</sup>;
- Reduction in the amount of waste generated that is not recycled, per person (part of national indicator number 15 under the Well-Being of Future Generations (Wales) Act 2015)<sup>13</sup> – manifested as a reduction in the amount of recyclable materials in the residual wastes sent for incineration or landfill;
- High rate of compliance with the separation requirements (at least 95% by 2027);
- High awareness of the recycling requirements and obligations to comply among the impacted businesses, public sector and third

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<sup>12</sup> Note: future monitoring of this target must ensure that like-for-like data comparison is made. The 64% figure is from a producer survey that has error margins and also limited information on quality/subsequent rejected material. This needs to be factored in if a different data source is used for monitoring progress in the future i.e. if electronic waste tracking is used then historic survey figures should be adjusted to reflect estimated rejects and other limitations of (potentially) both datasets need factoring in.

<sup>13</sup> A like for like data comparison must be made as far as possible and differences in data sources needs factoring in. Worth noting that this indicator currently uses a combination of both surveys estimated data (I&C and C&D) and household data (WasteDataFlow).

sector organisations (increase from 12% in March 2023<sup>14</sup> to 80% by June 2024 to 95% by 2027); and

- High support of recycling requirements amongst the target audiences (a public survey concluded in March 2023 found that 77% of respondents overall were in favour of the regulations<sup>15</sup>).

### **2) *The Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023***

- Reduced landfill (12% in 2018<sup>16</sup> to <5% in 2025), in line with the Welsh Government's targets; and
- Reduced incineration/energy recovery (from 9% in 2018 to 0% in 2050, in line with the Welsh Government's targets)<sup>17</sup>.

### **3) *The Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023***

- Reduced disposal of food waste to sewer; and
- Full compliance with the ban three years after it has come into force.

8.4 The primary outcomes will be monitored with a combination of quantitative and qualitative methods, depending on the nature of the outcome and the availability of an appropriate data source.

8.5 It is currently envisaged that the Waste Tracking System will be the primary quantitative data source (from 2025 onwards) for monitoring outcomes associated with separation requirements and prohibition of the incineration and deposit in landfill. The Waste Tracking System is intended to be used as a primary data source to track recycling levels for industrial and commercial waste in Wales from 2025 onwards. However, where needed, it will be supported by supplementary data sources such as records collected within WasteDataFlow, Extended Producer Responsibility Scheme for packaging scheme, DRS, NRW waste and recycling surveys and NRW 'site return' data.

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<sup>14</sup> Wales Omnibus (2023). SBW Welsh Government Business Recycling/ Single Use Plastics Legislation

<sup>15</sup> Wales Omnibus (2023). SBW Welsh Government Business Recycling/ Single Use Plastics Legislation [Public attitudes on the changes to workplace recycling and the ban on single use plastics \(summary\) | GOV.WALES](#)

<sup>16</sup> <https://cdn.cyfoethnaturiol.cymru/media/693534/survey-of-commercial-and-industrial-waste-generated-in-wales-2018.pdf>

<sup>17</sup> Caveating that the rate of EfW may initially go up (as waste is diverted from landfill) before it eventually decreases. It is also worth noting that municipal incinerators located in Wales are likely to source waste from alternative sources to maintain feedstock and remain operational. The 2018 data is from the I&C waste survey so it is also likely that these are underestimations where fate was unknown (e.g., reported as 'transfer/treatment') and waste was indirectly sent to incineration as landfill e.g., waste rejected from recycling streams for disposal (that producers would not have known about when surveyed). Therefore, 2018 figures are estimated where waste was reported as sent directly to disposal from the survey.

- 8.6 Monitoring of the outcomes associated with a ban of food waste to sewer is expected to be led by Local Authority environmental health teams. Environmental Health Officers will be able to report the number of premises, out of those they visit<sup>18</sup>, that they find disposing of food waste to sewer. For example, inspections will show if a premises has a sink grinder/macerator for food waste with evidence of food disposal, and/or if there is no evidence of a food waste bin/collection.
- 8.7 The outcomes that cannot be measured using data from the Waste Tracking System and/or supplementary data sources listed above, can be monitored through a mix of other qualitative and quantitative evidence, including Welsh Government commissioned surveys, inspections and direct feedback from the businesses.

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<sup>18</sup> The frequency of inspections from Environmental Health Officers will vary depending on the type of premises being inspected, with the frequency being dependent on the risks to public health posed by each business. While some very low risk businesses may not be inspected, a high-risk business premises could be inspected every 6 months. Each inspection is assumed to be part of a pre-existing environmental health inspection carried out by one local authority inspector.