



# Waste Legislation

England

Kent County Council  
09/11/2021



# Contents

Contents	2
Foreward	3
Introduction	3
Waste Legislation – Place in the project	3
1. Introduction	4
1.1 Background	4
1.2. Entrepreneurs and waste	4
1.3. Reading Guide	4
2. Questions from businesses	5
2.1. Introduction	5
2.2 The Questions	5
The UK has also set recycling targets for particular materials, which are set out below.	8
3. UK Waste Framework	9
3.1 Introduction	9
3.2 Explanation	9
3.3 Waste Legislation and upcycling of waste or raw materials	10
3.4 Relation between business and household waste	13
4. UK Waste Legislation	13
4.1.1 Waste (Circular Economy)	13
4.1.2 Waste Regulations	13
4.1.3 Producer Responsibility	13
4.2 Businesses, waste and circular economy	14
4.2.1 Introduction	14
4.2.2 Specific Waste processing	15
4.2.3 Transport of waste	16
4.2.4 Compliance and Enforcements	16
4.2.4 Local waste legislation	17



# Foreward

## Introduction

This report is part of the Interreg 2 Seas project, Upcycle Your Waste (UYW). The aim of the project is to allow SMEs to process their waste flows in a circular manner, preferably locally, and to convert them into new raw materials and products.

This is achieved by developing and introducing knowledge, tools and facilities and the project enables SMEs and local authorities to make this transition. The project works in 6 pilot areas located in IJmond, Ostend, Roubaix, Kent, Norwich and The Hague. The overall aim of the UYW project is to have 360 SMEs adopting circular business cases and upcycling 20% of waste streams.

In addition, we want to use the project to increase awareness and knowledge about waste separation, upcycling and the circular economy among the business community and local authorities. We do this by, among other things:

- Analysis of SME barriers and drivers for upcycling
- Inventory of waste flows at industrial site level
- Development of circular business cases
- Development of a protocol for purchasing circular waste collection and processing
- Capacity building and training for SMEs on waste/raw materials management

## Waste Legislation – Place in the project

In this report waste legislation in England is discussed and explained. Current waste legislation can form a barrier to useful and high-quality waste. The aim of this report is to help SMEs:

- Understand waste regulations;
- Be able to find out which rules they have to comply with;
- Find more targeted information;
- Determine the possibilities offered by legislation for the high-quality upcycling of industrial waste into new raw materials and products.

By making this information available in a handy and practical way, we want to help SMEs not to see waste regulations as a barrier. With this we expect that SMEs will find waste legislation less of an obstacle.



# 1. Introduction

## 1.1 Background

The UK national controls on waste originated from the Control of Pollution Act 1974 and were strengthened by the introduction of the Environmental Protection Act 1990. Early legislation focused on the disposal of waste, but since the introduction of the EC Framework Directive on waste, control has been widened to include the storage, treatment, recycling and transport of waste. Recent years have seen a broadening of the scope of waste legislation to cover a wider range of waste management operations. The current legislation controls all sections of the waste management industry including storage, registration, licensing, monitoring and record keeping. It also imposes controls on specific waste streams such as hazardous waste and clinical waste. The Waste (England and Wales) Regulations which were passed in 2011 (SI 2011/988) required the establishment of waste prevention programmes and waste management plans, imposing duties in relation to the improved use of waste as a resource. This aimed to improve recycling by implementing the concepts of waste self-sufficiency, the 'polluter pays' and 'proximity' (waste should be treated or disposed of close to the area from which they derive) principles. The Regulations also required the Waste Hierarchy (within Article 4 of the Directive) to be applied, and measures taken to facilitate it. The Waste Hierarchy sets out waste management options in the order in which they should be prioritised: Prevention, Re-Use, Recycle, Recovery and Disposal.

## 1.2. Entrepreneurs and waste

As an entrepreneur you have to deal with waste. You want to get rid of your waste regularly. This may concern leftovers from your production, rejected products or parts, materials, packaging, etc. As mentioned, a whole system of rules and regulations has been developed to prevent damage to people and the environment due to waste. It is not always easy to gain a good understanding of this. Complying with these rules is often complicated and expensive.

We also see that waste is a valuable raw material or that waste contains valuable raw materials that we want to reuse. Regulations have also been made for this, which are also being further developed.

To get rid of your waste as an entrepreneur, you can continue to do what you have always done or you can ensure that your waste is reused as a raw material if you can demonstrate that this is possible without risk.

With this report, we aim to help you as an entrepreneur comply with waste legislation and to help you make the choice to have your waste processed as waste or as raw material.

## 1.3. Reading Guide

That is why we have included specific questions for you as entrepreneurs in Chapter 2 to guide you through the relevant regulations. The answers to these questions can be found in chapters 3 and 4, in which we examine respectively the current European waste legislative framework and the national waste legislation of the countries in the Interreg 2 seas project area, i.e. Belgium (Flanders), France, the United Kingdom and The Netherlands. If applicable, the waste regulations at the local level have also been mapped



out. These chapters also contain references to specific provisions in the policy or legislation if you would like to know more background and details.

## 2. Questions from businesses

### 2.1. Introduction

As a business you regularly have to deal with waste. It is not easy to find out which criteria for separation, collection and processing apply to your waste. If you do not want to see your waste as waste but as a valuable raw material, you can look at the possibilities that the “waste legislation offers for this. It is difficult to write out all the rules exactly and to explain them in an easy way.

That is why we have chosen a somewhat more practical approach. We help you on your way by means of a questionnaire in Chapter 2. In this way, through the answers (with references to chapters 3 and 4, with corresponding references to appendices or websites) you can find your own way through waste legislation and find the direction to find solutions that suit you.

### 2.2 The Questions

#### What is waste?

Waste is any substance or object that you have disposed of, plan to dispose of or are required to dispose of. According to this definition, anything can be deemed a waste.

#### When is it not waste?

The Environment Agency has published various documents that describe certain waste materials that can be used as a raw material in production processes without being treated as a waste. These documents include but are not limited to U1 – Use of waste in construction, U8 – Use of waste for a specified purpose and U9 – Use of waste to manufacture finished goods. There are some quantity limits within these exemptions, as well as conditions regarding storage of the materials.

In addition, an end-of-waste determination can be made for materials, meaning that they are no longer legally deemed to be a waste. This is the case if the material is intended to be used for specific purposes. For example, if there is a market for the material and the material complies with, among other things, technical regulations, product regulations and the use of the material has no overall adverse effects on the environment or human health. The UK has retained the European End of Waste Regulation, which stipulates that certain conditions must be met to attain ‘end-of-waste’ status. This applies to materials such as iron, steel, copper, aluminium scrap and glass cullet. There are also Quality Protocols that explain how certain materials can achieve end of waste designation. If a business cannot find the guidance that they need for their particular waste material, then they can consult the government Definition of Waste service, which gives the Environment Agency’s opinion on whether something meets ‘end-of-waste’ status. This service charges an hourly rate of £125.



### **I would like to offer my waste stream as a raw material for a new application. Can I do that?**

You must first ask yourself whether your waste stream is definitely considered as a waste (see questions 2 & 3) because it is important to know whether the material could have adverse impacts on the environment or on human health. The Environment Agency documents U1 through U16 detail which materials can be used directly as a raw material, without needed to be treated as a waste product. If these waste exemptions don't apply, then you can see if your waste stream could be defined as a by-product or obtain an end-of-waste status. If it concerns hazardous waste, then this will not be possible and separate regulations will apply.

### **What restrictions should I be aware of when considering using a waste as a raw material or for a new application?**

The waste exemptions from the Environment Agency (U1-U16) allow you to use certain waste materials as raw materials without worrying about the waste duties. If your material does not fall under these exemptions, then it must be separated as necessary, classified, securely stored and transported in registered waste carriers with written information. To then re-use the material/products for new applications, the materials would need to be classified as a by-product or meet the end-of-waste criteria (see question 2), so that the restrictions on handling and disposal of waste would no longer apply. If it cannot meet end-of-waste criteria for re-use, then it may be that that particular material simply poses too much of a threat to humans or the environment to be used in any production processes.

Legislation on the shipment of waste has been retained from the EU Regulation 1013/2006, which sets out the rules around export depending on source and destination, as well as waste type and treatment.

### **I want to start using hazardous waste as a raw material within my production process. What rules should I follow?**

Hazardous waste occupies its own separate waste stream and has specific legislation that applies to how it must be managed (The Hazardous Waste Regulations 2005 (SI 2005/894) and amendments). This is because these materials at specific concentrations present a risk to the environment and to human health. It is prohibited to mix different grades of hazardous waste, or to mix with any other waste or non-waste material. As such, diluting hazardous waste to lower the concentration below the threshold for defining it as hazardous is also prohibited and it will still be deemed as hazardous. However, a hazardous waste can be mixed with other materials when part of a processing procedure and when completed by someone with a waste permit that allows them to do so. Therefore, if a business wants to use a hazardous waste in their production processes, then they must obtain a waste permit.

Please note: Hazardous waste must only be transported by those that are licensed to do so and have an accompanying consignment note. Detailed records must be kept for any producers, holders, consignors or carriers of hazardous waste.

### **What are my requirements as a business, when managing my waste streams? How long do I have to keep the waste notes?**

The Environment Protection Act 1990 places a 'duty of care' on anyone who imports, produces, carries, keeps, treats or disposes of controlled waste. This obliges businesses to ensure that transfers of waste are completed by authorised persons and that they receive a written note detailing the code that the waste belongs to according to Decision



(2000/532/EC), a description of the waste, its quantity and state, the time and place of transfer, details of those involved, the SIC code of the transferor and that they have carried out the waste hierarchy duty. The SIC code comes from the UK Standard Industrial Classification of Industrial Activities (2007) that was published by the Office for National Statistics.

The written note, or a copy, must be kept for two years and produced within seven days when requested.

### I always give my manufacturing by-products (wood chips) to my neighbor to burn in his stove; is that allowed according to the law?

The Environment Agency's Exempt Waste Operations T6 allows for waste wood to be processed (chipped, shredded etc) for re-use, such as for a fuel source. Under this exemption, the sorting and grading of wood is also allowed but this exemption does not apply if the wood is deemed as hazardous waste.

However, the answer to this question is no. This is because in this situation, you are transferring a waste product to another individual for their use. You are not authorised to transport the waste and your neighbour is also not authorised to collect. The burning of the woodchips is technically the use of a waste product without an environmental permit.

Further guidance has been produced by the Wood Recyclers' Association and within Regulatory Positions Statements 249 and 250.

### Do I have to separate my waste streams?

Waste must be collected separately provided that it is necessary to help prepare the waste for re-use, recycling or other recovery operations. The rules and policies on waste separation that apply to companies are set out in the Waste Regulations SI 2020/904. Generally, the substances that must always be separated are classed as hazardous waste and so must be treated separately.

#### Examples of waste that must always be separated

General waste	<ul style="list-style-type: none"> <li>• Batteries and accumulators or appliances containing them</li> <li>• Fire extinguishers and pressurised canisters</li> <li>• Electrical and electronic equipment containing hazardous substances over a certain level</li> <li>• Light bulbs or fluorescent tubes</li> <li>• Non-edible oils</li> <li>• Any waste containing chemicals harmful to humans or the environment (hazardous waste)</li> <li>• Hot ash</li> </ul>
Waste for landfill (non-hazardous)	<ul style="list-style-type: none"> <li>• Any liquid waste, including waste water</li> <li>• Explosives, corrosive, oxidising or flammable waste</li> <li>• Infectious material or veterinary waste</li> <li>• Chemicals from research and development where the effects are unknown</li> <li>• Paper, metal, glass or plastic separated specifically for recycling</li> <li>• Gypsum based wastes cannot go to landfill that accepts biodegradable material</li> </ul>



Waste from vehicles	<ul style="list-style-type: none"> <li>• End-of-life vehicles before being depolluted</li> <li>• Whole or shredded tires, except bike tires or those with a diameter larger than 1.4m</li> <li>• All car oils</li> <li>• Brake fluid</li> <li>• Car batteries</li> <li>• Fuel tanks</li> <li>• All components containing mercury</li> </ul>
Construction and demolition waste	<ul style="list-style-type: none"> <li>• Asbestos-containing waste with concentrations higher than 0.1%</li> <li>• Concrete, bricks, tiles or ceramics containing hazardous substances</li> <li>• Wood, glass, plastic or metal containing hazardous substances</li> <li>• Asphalt with a concentration of benzo[a]pyrene above 50ppm (mg/kg)</li> <li>• Any waste containing coal tar with a concentration higher than 0.1%</li> <li>• Soil and stones containing hazardous substances</li> <li>• Sewage, sludge or septic tank sludge</li> <li>• Cables containing oils</li> <li>• Un-set or un-used cement</li> <li>• Paint containing organic solvents</li> <li>• Paint or varnish remover</li> <li>• Adhesives or sealants containing organic solvents</li> </ul>
Waste from agriculture	<ul style="list-style-type: none"> <li>• Pesticides</li> <li>• Biodegradable waste (by 31<sup>st</sup> Dec 2023*)</li> <li>• Animal by-products</li> </ul>
Waste from industry, utilities and minerals	<ul style="list-style-type: none"> <li>• Hazardous sludge from waste water treatment</li> <li>• Hazardous waste from power stations</li> <li>• Acids and bases from chemical processes</li> </ul>
Other specific waste	<ul style="list-style-type: none"> <li>• Waste mineral oils (liquid fuels and lubricants, synthetic oils and waste oil separator contents)</li> <li>• Other waste oils (diesel, biodiesel etc)</li> <li>• Wastes that contain or are contaminated with oil</li> <li>• Medical waste</li> <li>• Waste containing mercury</li> <li>• Printer toner</li> <li>• Solvents</li> <li>• Equipment containing ozone depleting substances (like fridges)</li> <li>• Hazardous waste container</li> </ul>

The UK has also set recycling targets for particular materials, which are set out below.

Material	2020 (%)	2021 (%)	2022 (%)
Glass	80	81	82
Plastic	57	59	61



Aluminium	64	66	69
Steel	85	86	87
Paper/Board	75	79	83
Wood	48	35	35

### How do I know if I am dealing with hazardous waste?

The European Waste Catalogue gives a detailed list of all wastes that are considered as hazardous and this is also indicated by an asterisk after the material's 6 digit identifying code. The Secretary of State also has the power to declare a batch of waste as hazardous in exceptional circumstances.

## 3. UK Waste Framework

### 3.1 Introduction

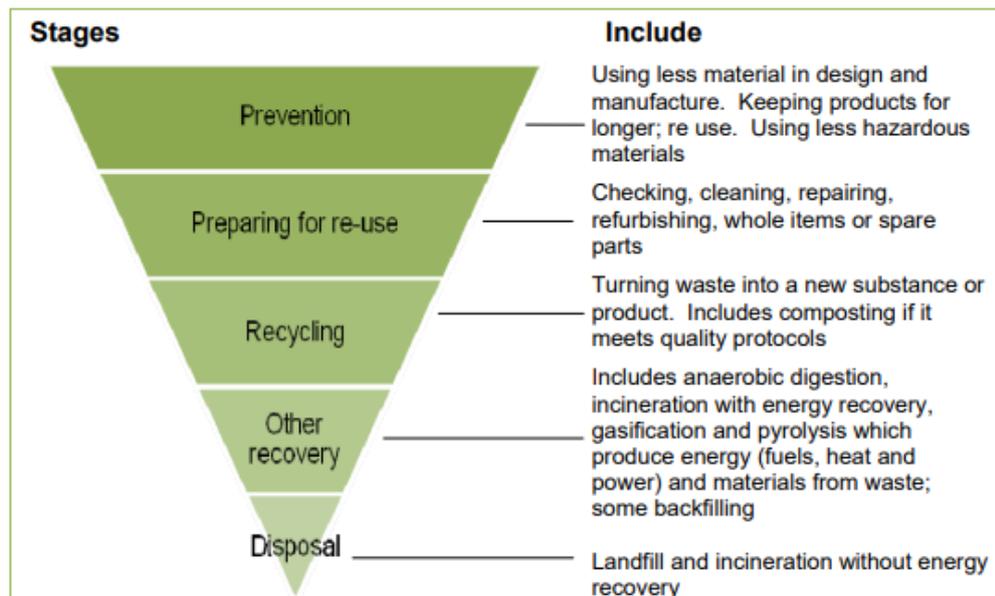
Unlike other areas of environmental law, the development of legislative controls over the management and disposal of solid waste in the UK are comparatively recent. Previously, waste was considered simply as an unwanted substance of no value, which only resulted in aesthetic environmental impact. Several high-profile incidents, resulting in environmental damage, changed attitudes towards waste and heralded the introduction of legislation controlling its disposal. This includes the 'polluter pays' principle where heavy fines can be imposed by the Environment Agency for breaches of law and protocol. An extension to this has been applied to UK manufacturing through the 'producer responsibility'. The aim is to ensure that businesses placing products on the market take responsibility once they have reached the end of their life. Though this has led to some best practice adoption and closed loop circularity, there is still very much a linear flow of materials in many industries, especially where recycling and segregation of consumer produce is difficult. In law, this is largely limited to end-of-life vehicles (End-of-Life Vehicles (Producer Responsibility) Regulations 2005), waste electrical and electronic equipment (WEEE), batteries and packaging waste.

### 3.2 Explanation

The legal definition of 'waste' in the UK derives from the EU Waste Framework directive 2008/98/EC, which defines waste as being "any substance or object which the holder discards, or intends or is required to discard". This covers both what is 'decided to' and 'required to' be thrown away. Even if the substance or article is given to someone else to be reused or recycled, it is still legally considered to be waste if it is no longer required by the person who produced it.

The "waste hierarchy" ranks waste management options according to what is best for the environment. It gives top priority to preventing waste in the first place. When waste is created, it gives priority to preparing it for re-use, then recycling, then recovery, and last of all disposal (e.g. landfill).





### 3.3 Waste Legislation and upcycling of waste or raw materials

The European Waste Catalogue contains a hierarchical list of waste descriptions, each of which is assigned a six-digit code, with the first two digits being a reference to the source of the waste. The Waste (England and Wales) Regulations 2011 (SI 2011/988) does however give a list of exemptions that are not legally regarded as waste in the UK and which fall under different regulations and restrictions. These include gaseous emissions, land (contaminated or otherwise), excavated materials for use on site, radioactive waste, decommissioned explosives, faecal matter, waste waters, animal by-products, animal carcasses not from slaughter, quarry waste and non-hazardous sediments. The specificities of these exemptions can be found in the Waste Regulations (SI 2011/988).

UK legislation classifies waste by type, as do other parts of Europe. The classifications are as follows:

- › controlled waste (including household, commercial and industrial waste not otherwise classified)
- › hazardous waste (containing properties harmful to human health or the environment like chemicals, batteries or clinical waste)
- › WEEE (Waste Electrical and Electronic Equipment)
- › packaging (any material used for the protection, delivery and presentation of goods from the producer to the user).

Most businesses produce controlled waste and all producers of commercial waste have a legal duty to produce, store, transport and dispose of waste appropriately and without harming the environment. They must prove that the waste is not only segregated, accurately classified and securely stored but also that it is transported in registered waste carriers with written information (previously referred to as transport notes) and disposed of at authorized sites. The European Waste Catalogue gives a detailed list of all wastes that are



considered as hazardous and therefore must be treated as such, including their specific concentration limits, and they will have an asterisk after their six-digit code to indicate this. A waste that has been diluted to lower the concentration below the threshold that deems it to be hazardous, will still be considered as a hazardous waste.

In addition to this, the Department for Business, Energy and Industrial Strategy (BEIS) has published the Streamlined Energy and Carbon Reporting (SECR) framework which obligates companies to comply with new reporting of energy use and carbon emissions. This came into force in April 2019 and companies are being given one year to collect the data before public disclosure. Chapter 5 of these guidelines concerns waste, where the waste hierarchy and circular economy are referenced, and it is stated that waste must be measured if not already done so or to ask for the data from their waste management company. Businesses are asked to report these numbers as well as targets to improve their resource efficiency and the waste prevention methods that will be put in place to achieve these targets, as well as any energy that is produced from the waste.

Some efforts towards a circular economy have been in place for some time, including the U9 exemption from the Environment Agency (2010) where certain materials are allowed to be used to manufacture new furnished goods. Examples include using waste boiler ash for breeze blocks or scrap textiles for new carpet underlay. However, this only applies to a few specific examples so is not particularly flexible. There are also some barriers for new businesses starting up that wish to focus on a circular economy through re-use, which helps to reduce waste. For example, there are tax relief schemes in the UK that incentivise investors to buy shares in particular start-ups: the Seed Enterprise Investment Scheme (SEIS) and the Enterprise Investment Scheme (EIS). Unfortunately, there is a list of excluded trades, including those that have assets for hire, which was meant to target furnishings and caravans, but now acts as a barrier for companies which want to make everyday goods for hire from gaining vital investment. Renting forms a key part of the circular economy to discourage the buying of goods (such as certain electricals and clothing) where it is not necessary and encourages repair throughout its lifetime; this would decrease the volume of waste from these sources.

The Waste Batteries and Accumulators Regulations 2009 (SI 2009/890) implements the waste provisions of the Directive 2006/66/EC on waste batteries and accumulators. It aims to minimise the negative impacts of batteries and accumulators on the environment by setting recycling targets and requiring producers to register as such. Responsibilities under the regulations are split between portable, industrial and automotive batteries and accumulators. Portable battery producers can help to meet recycling targets by joining Battery Compliance Schemes (BCSs). Distributors which supply more than 32kg of portable batteries to end users are also required to provide free of charge take back facilities to end users. In addition, those that produce more than 1 tonne of portable batteries must cover the costs of collection, treatment and recycling. Industrial or automotive batteries may not be disposed of in a landfill or by incineration, and delivery to an approved battery treatment operator or exporter must be arranged by the producer, who must issue evidence notes and provide reports to the appropriate authority.

The Waste Electrical and Electronic Equipment Regulations (SI 2013/3113) provides guidance on the recycling and re-use of WEEE in the UK and shares some similarities with the guidance on battery recycling. Responsibility for financing the collection, treatment and recovery of WEEE falls on producers. To do this, they must pay a charge and join an approved compliance scheme. However, if they are registered as a small producer then they do not have to pay the charge, meaning small businesses may not have to bear this cost. Certain targets are set for recycling WEEE at approved facilities and standardised



systems for recycling must be established. Distributors who provide new EEE must provide a free take back service for WEEE.

The UK is unique in Europe for requiring the producers of packaging to be responsible for the associated waste produced. This is under The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 and applies to businesses or groups with an annual turnover of more than £2 million or packaging waste in excess of 50 tonnes annually. This applies to the total packaging handled by the business, not just that produced and considers the raw materials converted, the filling of packaging and supplying packaged goods. It is important for Upcycle Your Waste to mention that leasing or hiring out packaging, such as pallets is included, as is those that operate a franchise or other licensed business, including pubs. Importing packaging, packaging materials or packaged goods into the UK or bringing transit packaging into the UK requires compliance with these obligations either individually or by joining a registered Producer Compliance Scheme (PCS). The PCSs will ensure that the obligations are met, advise the companies on their recycling responsibilities and take the legal responsibility for compliance. In order to comply, a producer or PCS needs to acquire PRNs (Packaging Waste Recovery Notes) or PERNs (Packaging Waste Export Recovery Notes) or both. If a business provides licences to other businesses, such as franchises or pub leases, then it may be responsible for their packaging obligations. Businesses that fail to take responsibility for it to be dealt with are less likely to face prosecution compared to the other industries discussed above but are required to pay set fines towards environmentally beneficial projects or charities working in the environmental arena. There have been many amendments to this in line with tightening targets for different waste streams, such as the Waste (Circular Economy - Amendment) Regulations (SI 2020/904).

However, the most recent is the Environment Act approved on the 9<sup>th</sup> November 2021, after being first introduced to Parliament in January 2020. The Act aims to protect and enhance the natural environment through a framework of environmental governance, and also through specific improvements to the environment such as through measures on waste and resource efficiency.

Part 1 of the Act establishes a framework for environmental governance, requiring long-term targets relating to the natural environment to be made for England and Wales. Targets must also be set regarding particulate matter and species abundance.

The Secretary of State must create an environmental improvement plan in relation to England and Wales for significantly improving the natural environment over a period of at least 15 years. Annual reports will monitor the implementation of such plans and any environmental improvement as a result.

The Office for Environmental Protection (OEP) is established by the Act. It has the main objective of contributing to:

- environmental protection; and
- the improvement of the natural environment.

Part 3 provides powers for provisions to be made to improve waste and resource efficiency. In particular, regulations can be made regarding:

- producer responsibility obligations;
- payment for the costs of disposing of products and materials;
- resource efficiency;
- the establishment of deposit schemes;
- charges for single use items.



## 3.4 Relation between business and household waste

The Controlled Waste (England and Wales) Regulations 2012 (SI 2012/811) expands on the previous classification of 'controlled waste', as described within Part II of the Environmental Protection Act 1990, to encompass more wastes and categorises them clearly as household, industrial or commercial. These Regulations revoked the Controlled Waste Regulations 1992 (SI 1992/588), which exempted too many organisations from paying a disposal charge and had to be covered instead by the taxpayer. This is because the Environmental Protection Act 1990 defines some waste from non-domestic sources (such as those generated by schools, universities and hospitals) as household waste but does not provide a mechanism to charge for disposal costs of such waste. For greater clarity between the sector and collecting or controlling authorities, it is clearly outlined which household waste should actually be classified as commercial, or which can be charged for disposal services (i.e. educational establishments).

# 4. UK Waste Legislation

## 4.1.1 Waste (Circular Economy)

The Waste (Circular Economy) (Amendment) Regulations (SI 2020/904) came into force on the 1st October 2020 and aim to fully implement the 2020 Circular Economy Package in the UK. This attempts to discourage the current linear system from production to disposal to create an economy of reuse and re-entry into the current system with existing resources. Specifically, it aims to prevent any recyclable materials from entering landfill or being incinerated and ensure that illegally mixed hazardous waste is separated when possible, prohibit mixing of oils that prevents recycling and require waste operators with waste exemptions to record, retain and submit information on hazardous waste and the products resultant from treating waste.

## 4.1.2 Waste Regulations

The Waste (England and Wales) Regulations (SI 2011/988) obligate the Secretary of State to produce National Waste Strategies, which outline how the amount of waste sent to landfill can be reduced through increased recycling and reuse (i.e. a circular economy) as well as reducing the hazardous state of waste. The Waste Management Plan for England was published in 2013.

## 4.1.3 Producer Responsibility

Current regulations around end of waste and re-use options chiefly revolve around producer responsibility under the 'polluter pays' principle and the concept of producer responsibility. This generally makes the producers of what eventually become waste products financially responsible for their collection, treatment, and recycling. This is to encourage an increase in the rate of recycling/re-use and to discourage business practices that make recycling more difficult or the large-scale production of products from virgin resources. There are however exceptions for small businesses that have small scale production of these items so that only companies who can bear the costs are subject to



these regulations and it does not disadvantage small businesses. There also tend to be obligations for companies to provide a free take back service where consumers can return their waste products to them free of charge, to encourage the uptake of recycling and redirect them from landfill. In the UK currently, these regulations are focused on:

1. Re-use/recycling for end-of-life vehicles;
2. Batteries;
3. WEEE;
4. Packaging

## 4.2 Businesses, waste and circular economy

### 4.2.1 Introduction

In this section we describe the legislation that businesses who want to get started with upcycling may have to deal with.

The Controlled Waste (England and Wales) Regulations (SI 2012/811) places responsibilities on all parties involved in the waste management chain, from the producer of the waste to the person responsible for its final disposal. If a business uses, treats, recovers, stores or disposes of waste, then they will require an environmental permit under the Environmental Permitting (England and Wales) Regulations (SI 2016/1154), unless they are exempt, but they will likely have to be registered with the Environment Agency. There is also a waste duty of care that applies to anyone who imports, produces, stores, transports, treats or disposes of waste. It states that they must take all reasonable and applicable measures to prevent waste from escaping, someone else illegally dealing with it as well as ensuring that transfer of the waste occurs only to an 'authorised person' and is accompanied by a written description of the waste involved. This duty does not apply to occupiers of domestic properties. Overall, this system is designed to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods that harm the environment.

### 4.2.2 Circular Economy

For businesses that are seeking to follow circular economy principles, they must first determine whether the material they are working with is deemed as end-of-waste, which means that they are no longer subject to strict waste controls. The Environment Agency previously provided two options to assist with this. The first was a simple tool known as 'IsItWaste?', which was free to use for quick self-assessments to determine if a material was waste.

Unfortunately, this tool was decommissioned in March 2021 and is no longer available for use. The second is called the Definition of Waste Service (DoW Service), which charges for its services and can provide an opinion on whether a substance is waste. It classifies materials under the following categories: never a waste, waste, a by-product or no longer waste (end of waste). This opinion is not legally binding but can be the start of processes required for the permission to trade said materials across borders. This service has been suspended for improvements until at least 1st September 2021. In the interim, this leaves businesses with the only remaining option of conducting self-assessments using existing [Defra guidance](#).



A business will need to check if their materials need to meet the requirements of the EU End of Waste Regulation, which has been retained in UK law after Brexit. This applies to materials such as iron, steel, copper and aluminium scrap and glass cullet. When the regulations are met, the materials has achieved end of waste but if they cannot be met, then it remains legally a waste. In addition to the regulation, there are [Quality Protocols](#) that explain how a waste derived material can achieve end of waste. If a business does not need to meet the EU End of Waste Regulation and cannot find a quality protocol that applies to their material, then they must assess on a case-by-case basis whether they are dealing with waste, according to article 6(1) and 6(2) of the Waste Framework Directive 2008. Without any tools or overarching guidance to cut through the complexities around the definitions of waste versus end of waste, businesses may struggle to ensure that they are complying with legislature while following the principles of circular economy.

#### 4.2.2 Specific Waste processing

The Scrap Metal Dealers Act 2013 requires scrap dealers to obtain a license from their local authority and to maintain records of their business. The levels of metal theft, specifically from churches and energy, communications and travel networks, prompted this act to be updated to increase regulation of metal re-use and disposal. Scrap dealers can no longer accept cash payments for metal to maintain an audit trail of transactions and they must record the identity of anyone that they buy scrap metal from, including photographic identification. A license is only required if scrap metal dealing is deemed the whole part of your business. This means that businesses like skip companies, electricians and plumbers who sell scrap as a small fraction of their business will not need a license. The Act also closes a loophole in The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act that provided exemptions for motor vehicle salvage operators and certain itinerant (mobile) collectors. These measures, combined with greater fines and sentences, will aim to reduce metal theft by stifling its illegal trade.

The Hazardous Waste Regulations 2005 (SI 2005/894) and various amendments outlines how hazardous waste should be processed. A consignment note is required when it is moved from any premises and records must be kept of any producers, holders, consignors or carriers of hazardous waste. It is also prohibited to mix hazardous with non-hazardous waste, including dilution or different grades of hazardous waste, as this complicates processing as the entire batch. This does not apply when it is part of a processing/disposal procedure and is completed by someone authorised to do so with a waste permit. Since the 2016 amendment, producers of hazardous waste are no longer required to register with the Environment Agency. The Secretary of State has the power to declare a batch of waste as hazardous in exceptional circumstances, should it not already be listed in the European Waste Catalogue as such. These regulations are enforced by the Environment Agency and anyone committing a set of specific offences (relating to illegal transport or incorrect record keeping) could receive an unlimited fine and up to two years in prison.

The Waste and Emissions Trading Act 2003 sets out the UK's plans to minimise the amount of Biodegradable Municipal Waste (BMW) that is sent to landfill. The definition for municipal waste was broadened to include commercial waste as well as household waste, to satisfy the environmental objectives of the Landfill Directive. The term "local authority collected municipal waste" was then introduced (2011/2499) to specify the waste that needs to be redirected from landfill but does not include waste from the private sector. An amendment to the Waste and Emissions Trading Act (SI 2013/141) brought the landfill allowance trading scheme in England to an end in 2013, meaning WDAs were no longer subject to restrictions on the weight of BMW sent to landfill. However, it upholds the requirements placed on WDAs to submit a return to the Environment Agency containing details of the total weight of local authority collected municipal waste that is sent to landfill or waste facilities. They must also describe the waste sent using the standard waste codes



from the List of Waste (England) Regulations (SI 2005/895). Any WDAs that fail to comply face fines of up to £1000.

### 4.2.3 Transport of waste

The Environment Protection Act 1990 places a 'duty of care' on anyone who imports, produces, carries, keeps, treats or disposes of controlled waste. This duty of care includes obligations to ensure that the transfer of waste is only made to an authorised person or to a person for authorised transport purposes and that the person receiving the waste also receives a written description of the contents. This written note must include information such as the code that the waste belongs to according to Decision (2000/532/EC), a description of the waste, its quantity and state, the time and place of transfer, details of those involved, the SIC code of the transferor and that they have carried out the waste hierarchy duty. In this regulation, a SIC code comes from the UK Standard Industrial Classification of Industrial Activities (2007) that was published by the Office for National Statistics. The written note, or a copy, must be kept for two years and produced within seven days when requested.

There is a two-tier system for Waste Carrier and Broker Registration in England and Wales (SI 2011/988). The first is an upper tier waste carrier, which applies when a business is transporting its own construction/demolition waste or when transporting other people's waste. If they are transporting their own waste in any other circumstance, or the waste being dealt with is an animal by-product, from mines/quarries or agricultural premises, then they must be registered as a lower tier waste carrier, broker or dealer. This also applies to waste collection, regulation or disposal authorities and charities/voluntary organisations. If a business carries out work in private households, the waste produced is considered commercial. Hazardous waste is an exception and must only be transported by those that are licensed to do so and does not require a written note but will have a consignment note completed instead.

### 4.2.4 Compliance and Enforcements

The Regulatory Enforcement and Sanctions Act 2008 introduced a range of alternative non-criminal sanctions which were available to a number of enforcement bodies. The Environmental Civil Sanctions (England) Order 2010 (SI 2010/1157) and amendments provide the Environment Agency, Natural England and local authorities with a range of enforcement powers to impose civil sanctions for environmental offences. It includes sections on nuisance and abandoned vehicles, litter, graffiti, waste, noise and dogs. There have been controls brought in to aid enforcement of 'fly tipping' and other waste crimes. The aim of these sanctions is to invest in the clean-up of environmental issues rather than the payment of fines. The sanctions made available to the Agency supplement existing enforcement powers and have the potential to give rise to substantial changes in the ways that the regulations are enforced. There are six sanctions available for the Agency to use when it does not deem that prosecution in court is an appropriate course of action for a specific misdemeanour. These are a Compliance Notice – requiring actions to comply with the law, a Restoration Notice – requiring that steps be taken to undo harm caused by non-compliance within a specified time frame, a Fixed Monetary Penalty – a small fine for minor offences, an Enforcement Undertaking – an offer to make amends for non-compliance, a Variable Monetary Penalty – a proportionate fine for more serious offences and a Stop Notice – requiring immediate halting of actions that cause serious harm to the environment. Fixed monetary penalties are likely to be issued for offences that incur minor or no direct environmental impact, such as paperwork and administration offences. Fixed Monetary Penalties are set at £300 for businesses and £100 for individuals, with discounts for early payment. In addition, the Clean Neighbourhoods and Environment Act 2005 built on the Environment Protection Act 1990 with added powers to strengthen cases for environmental prosecution. These include removing the defence of acting under one's



employer's instructions. Section 33 of the Environmental Protection Act is amended to increase the maximum available fines and terms of imprisonment. New sections 33A and 33B are added, to order those convicted of offences to make payment for costs of investigation, enforcement, waste removal, and/or eliminating or reducing the consequences of waste offences.

## 4.2.4 Local waste legislation

Commercial waste services vary across the country, so businesses will have to check their local council website to determine the required steps to take to legally dispose of their waste.