



Department
for Environment
Food & Rural Affairs

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**Consultation on draft Materials Recovery
Facility (MRF) Regulations for insertion into
Environmental Permitting (England and
Wales)(Amendment)(No.3) Regulations 2014
Summary of response and government response
February 2014**



Llywodraeth Cymru
Welsh Government

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Introduction and background

On 1 February 2013, the Department for Environment, Food and Rural Affairs (Defra) and Welsh Government¹ (WG) published a consultation seeking views on draft Regulations for Materials Recovery Facilities (MRFs)² for incorporation alongside a number of other amendments to the Environmental Permitting (England and Wales) Regulations 2010. The Regulations would require operators of MRFs to test the composition of samples of the material they put into the sorting process, the residues, and the useable output. The proposals were limited to permitted facilities handling over 1000 tonnes per annum and which sort mixed dry recyclate from household and commercial co-mingled collections. It was proposed that the test results would be published via the Environment Agency and Natural Resources Wales, and made transparent to stakeholders. This information would help support market operations through better and transparent information and so stimulate the market conditions necessary to improve quality of the material produced by MRFs so that it could be more readily recycled.

Overview

The Government welcomes the responses of stakeholders to the consultation. The following sections provide greater detail on the views expressed for each of the 11 questions posed in the consultation, together with the corresponding government response. The Government has taken into account responses to the consultation and will introduce regulations early in 2014.

We have carried out a qualitative and quantitative analysis of the responses. For each question we have shown the number of responses that (a) agree, (b) disagree, and (c) do not comment / are unclear, together with a description of the key arguments and issues raised by respondents in support of their position. This allows key messages conveyed through the consultation to be distilled along with the Governments' response. It is important to note that some responses, particularly from reprocessors and local authorities were written in similar or identical terms, replicated one another.

Respondent were coded according to one of the following broad groups:

- Local Authorities and their representative bodies
- Reprocessors and Manufacturers and their representative bodies
- Waste Management Companies and their representative bodies

¹ Unless otherwise indicated, "Government" should be taken to mean both the UK Government and the Welsh Government

² MRF – Material Recovery Facilities

- Other professional/representative/trade bodies
- Others - includes Interest Groups, Campaign bodies and Consultancies

About this document

This document is organised into sections relating to each question asked in the consultation paper. This document does not attempt to repeat the background information given in the consultation paper and provides limited context for each topic. Please refer to the consultation document for a summary of the original proposals and questions posed.

For each topic this document states the question asked in the consultation document, summarises the responses to the question and then provides a government response to the issues raised.

Summary of responses – group breakdown

88 responses were received to the consultation. Table 1 shows the number of responses by the broad categories of the respondent.

Type of Company	No of responses
Local Authorities including their representative bodies	42
Waste Management Companies including their representative bodies	11
Reprocessors and Manufacturers including their representative bodies	23
Other Professional/Representative/Trade bodies	4
Others – including Consultancies, Interest Groups or Campaign Bodies	8
Total	88

Rationale for intervention

This section provided the rationale for government intervention and the impact of poor quality recyclate on the viability of recycling businesses as well as the associated environment and economical costs. The consultation document provided a summary of what could be delivered by the draft MRF Regulation including the Government's vision for improving the quality of recycling, and the full range of measures we plan to take to achieve this, as described in a Quality Action Plan (England only)³. We asked the following questions:

Respondent views

Question 1 a) Do you agree that the Government should intervene to correct the information asymmetry to improve the transparency of information on material quality?

Of the 88 responses to the consultation, 80 respondents (90%) agreed, 4 (5%) did not agree and 4 (5%) made no comment or a statement that did not fit into those previously listed.

There was broad agreement that the regulations would provide a robust monitoring framework to assess whether comingled collection systems meet the requirements of the revised Waste Framework Directive (rWFD) and bring greater transparency and certainty to the market. Respondents also commented that the sampling and testing regime would help MRFs in their decision making process, provide for ongoing and regular discussions between local authorities and MRF operators as well as ensure that MRF outputs meet domestic and export requirements.

Many of those who agreed wanted the proposed regulation to be proportionate and would like to see action taken across the whole supply chain to improve quality.

Question 1 b) Do you agree with this proposal to mandate MRFs above a certain size threshold to measure, sample and report on their input, output and residual?

Of the 88 consultation responses, 55 (63%) agreed with the proposal, 14 (16%) did not agree and a further 19 (22%) offered no comment or comments that were not directly related to the question.

Responses from reprocessors and interest groups were more likely to agree with the proposal. Whilst the majority of local authorities' also agreed with the proposal, they had

³ <https://www.gov.uk/government/publications/improving-the-quality-of-recyclates-quality-action-plan-england-only>

some reservations on limiting the Regulation to facilities handling over 1000 tonnes per annum. However, responses from waste management companies generally disagreed with the proposal, or specific elements of the proposal such as the requirement to measure the residual waste stream as it could have health and safety implications.

Other reasons given for opposing the proposal include the following:

- Action taken to address other issues would provide a more effective means of improving quality. For example, focusing on how local authorities procure waste management contracts may be a greater commercial incentive for MRFs to improve the quality of their output.
- The Packaging Export Recovery Note (PERN) acting as a disincentive for improving quality since the whole weight of material exported qualifies for a PERN including the contamination.
- The additional requirements on MRFs may lead to increased costs which may be passed on to local authorities through increases in gate fees

Question 1 c) If not, what other interventions (including voluntary schemes) could be used to achieve an improvement both in the provision of transparent information and an improvement in the quality of MRF material outputs.

Of the 88 consultation responses, 43 (49%) provided suggestions on other interventions in addition to the proposed MRF Regulation or provided a commentary on why the current voluntary system in place had not been effective. 51% of consultation responses did not comment.

- 16 respondents felt the current voluntary system – the Recycling Registration Service (RRS) was not working as effectively as it should. They felt that the patchy adherence to sampling the quality of input and output made it difficult for MRFs to be competitive, and that was not fully recognised and utilised by the market.
- 6 respondents felt that proper enforcement of the Transfrontier Shipment Regulations (TFS) would make the current proposed regulation more effective by strengthening the export routes. Some respondents also suggested amending the TFS Regulations so that the export of dry recyclates as green list would only be allowed from accredited facilities that are part of an approved scheme.
- Other respondents advocated local authorities taking greater ownership of the quality of input to MRFs, and better contracts between MRFs and local authorities, based on
 - best practice,
 - detailed reporting requirements, and
 - greater collaboration across the supply chain.

- Some felt information regarding reprocessors' quality standards and the end destinations of materials should also be made readily available.

Government's response

The Government welcomes the broad support for intervention to improve the transparency of information on material quality. We note the call for the MRF Regulations to be proportionate and for action to be taken across the whole supply chain. As stated in the consultation document we want to strike the right balance between rigour and avoidance of unnecessary burdens on business. **Therefore we will introduce regulations which will include the requirements to monitor quality. This will assist in demonstrating compliance with the rWFD objective, to promote high quality recycling and the separate collection requirement. The MRF Regulation will be incorporated into the Environmental Permitting (England and Wales)(Amendment) Regulations 2014.**

On the proposals to mandate MRFs above a certain size threshold to measure, sample and report on their input, output and residual, the response was more mixed. Waste management companies were opposed to the sampling of residual waste on health and safety grounds. **We have accepted the arguments made and propose to drop the requirement to sample residual waste.**

We note the comments in relation to the tightening of regulation to achieve our intended objective, particularly the enforcement of Transfrontier Shipment Regulations, balancing the need to avoid disruption to compliant exports. In the Quality Action Plan (England only), we detailed actions that could be taken by working together with the Environment Agency to improve confidence that exports of dry recyclates comply with legal requirements, support our objective of high quality recycling and to ensure effective action is taken against those not complying with the law.

We are working with the Environment Agency (for England) and Natural Resources Wales (for Wales) to improve the robustness of their enforcement of the export controls. For example, we have recently consulted on proposals to allow HMRC to disclose export data to our competent authorities. This will help the Environment Agency and Natural Resources Wales to target enforcement activity more effectively.

The MRF Regulations should provide the Environment Agency and Natural Resources Wales with a large amount of information about the quality of MRF outputs. This will help inform their enforcement approach and improve their targeting of illegal shipments. We do not expect this to cause problems for compliant exports.

We are aware that stakeholders are concerned that there is a lack of a level playing field between Packaging Recovery Notes (PRNs) and packaging export recovery notes (PERNs) and that the system currently incentivises exports of poor quality material.

We are actively exploring the potential to make amendments to Environment Agency guidance to start to even out any disparity in the playing field in the PRN/PERN system.

The areas of good practice across the supply chain already in place to promote high quality recycling have been outlined in Defra's Quality Action Plan (QAP) which sets out measures aimed to support a market environment which is capable of promoting high quality recycling and delivering recyclates of sufficient quality to meet the standards of the relevant recycling sectors. We would like to see this good practice spread more widely and welcome collaboration across the supply chain such as that between the Resource Association and Local Authority Recycling Advisory Committee (LARAC) End Destinations of Recycling Charter for local authorities to sign-up to on a voluntary basis in England. In Wales it is a requirement under Paragraph 4 of The Recycling, Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 that local authorities use the WasteDataFlow system to report the quantities of local authority collected municipal waste sent to each and every facility. The need to use Question 100 of WasteDataFlow to record end destinations is contained in statutory guidance made under section 7 of the Waste (Wales) Measure 2010.

Impact assessment

This section asked specific questions on the draft Impact Assessment (IA) published with the consultation document.

Question 2 a) Are the assumptions in the draft IA correct? (b) Do you have any further information to improve our assumptions? and (c) Could the proposals have any impacts other than those intended?

Of the 88 consultation responses, 32 (36%) agreed with the assumptions made in the impact assessment, 14 (16%) did not agree and 42 (47%) respondents made no comment or a statement that did not fit into those previously listed.

61 responses made some form of other comment on the IA. These are summarised in Table 2 below together with the Government response:

Table 2

Consultation comment	Government response
Rationale for intervention	
The proposed Regulations will not drive up quality on their own; the entire supply chain needs to take action e.g. quality of input needs to be addressed through controls on local authorities.	The need for other action to promote high quality recycling is recognised in the final IA in Section 4 and in the Quality Action Plan (for England) and the Collection, Infrastructure and Markets Sector Plan (for Wales).
Costs and benefits / assumptions	
The IA should take account of costs to local authorities as some respondents felt it would be likely that MRF operators will seek to pass on any increase in operating costs via increased gate fees.	The final IA only quantifies the direct costs to MRF operators but recognises in Section 6 that they may seek to pass on these costs either via increased gate fees (paid by LAs) or higher recyclate value (paid by reprocessors). Given the uncertainty over the extent to which MRF operators may choose to pass on costs – and how - the indirect costs to LAs have not been quantified.
A number of responses questioned whether higher quality recyclate would	A recent Resource Association report highlighted the costs to reprocessors of

<p>lead to higher prices for reprocessors – various reasons were given to support this view including a lack of transparency around prices and a lack of willingness to pay by reprocessors in the current economic climate.</p>	<p>dealing with contamination. It is not unreasonable to expect that reprocessors would be willing to pay more for higher quality recyclate to avoid these costs. Other responses to the consultation, and discussions with some reprocessors, support the Government’s view that higher quality recyclate might be expected to attract a higher price.</p>
<p>Some respondents felt the IA underestimated labour costs (e.g. regional differences, holiday and national insurance contributions) but overestimated the time for taking samples and some capital costs (e.g. cost of scales).</p>	<p>Labour costs, capital costs and time for taking samples have been revised for the final IA (see Table 11 in the final IA).</p>
<p>Some respondents requested greater clarity in relation to the cost assumptions made in Annex 1 of the impact assessment, particularly regarding the sampling methodology.</p>	<p>Annex 1 of the final IA contains a brief description of the sampling methodology assumed for the purposes of estimating costs to businesses.</p>
<p>Some respondents (particularly reprocessors) felt the IA failed to consider the full costs incurred by reprocessors as a result of poor quality material (several references to a recent Resource Association report on costs of contamination). A suggestion was made that the IA should include a cost:benefit analysis of costs to MRFs vs. benefits to reprocessors.</p>	<p>We do not have sufficient information to construct a separate cost benefit analysis as the actual impact up and down the recycling chain is uncertain. That said, Annex III of the final IA estimates the benefits of a step improvement in the quality of recyclate produced by MRFs.</p>
<p>Several responses highlighted an error made on page 10 of the impact assessment relating to the assumed size bands of MRFs.</p>	<p>Corrected in the final IA.</p>
<p>Some respondents expressed concern that the IA was based on information obtained from waste management companies and highlighted the need to</p>	<p>The rationale for action and assumptions underpinning the estimation of costs and benefits in the consultation IA were based on discussions with and</p>

<p>seek information from reprocessors.</p>	<p>information provided by both waste management companies and reprocessors. All parties were invited to comment as part of the consultation process.</p>
<p>Unintended consequences</p>	
<p>An increase in recyclate cost will mean it is uncompetitive compared to virgin material.</p>	<p>We consider it unlikely that recyclate costs will increase to the extent that it will become uncompetitive compared to virgin material. As explained previously, MRFs have a choice on whether and how to pass on costs. Furthermore, the impact is expected to be small as the costs per MRF are estimated to be very low relative to other costs and turnover.</p>
<p>Better information on contamination levels could lead to a drop in recycling rates.</p>	<p>We accept there could be a small drop in reported recycling rates in the short term. However, robust and transparent information on quality is important to maintain the long-term viability of recycling.</p>
<p>SMEs may struggle to comply as the cost of compliance is disproportionate for small operators. For example, a MRF processing 5,000 tonnes will incur an annual cost per tonne of £2.65 to meet the legislative requirements whereas a large MRF processing 75,000 tonnes will incur a cost per tonne of £0.75 (or less for higher tonnage processed).</p>	<p>The Government will remove the time-based sampling frequency to help address this. The final IA considers the costs to different sized operators in terms of pounds per tonne of material throughput.</p>
<p>The need to consider how this affects UK competitiveness relative to other EU countries.</p>	<p>We do not expect negative impacts on UK competitiveness. MRF operators have a choice on how to pass on costs. Other European countries often have their own arrangements for ensuring quality of recyclate. Our work on quality is, in part, to protect UK position in a competitive global market.</p>

<p>The need to ensure smooth transition and integration with enforcement of Transfrontier Shipment Regulations and avoid disruption to compliant exports.</p>	<p>We are working with the Environment Agency and Natural Resources Wales to consider how information on quality can help enforcement of export controls.</p>
<p>The proposals may increase production of Refuse Derived Fuel (RDF).</p>	<p>We expect collecting and sorting co-mingled waste for recycling to remain more attractive economically than producing RDF as the costs per MRF are estimated to be very low relative to other costs and turnover.</p>
<p>A weak Code of Practice may not address quality issues.</p>	<p>We will keep the effectiveness of the Regulations under review.</p>

The final impact assessment also takes account of the following:

- The number of MRFs considered to be within scope of the regulations has increased from 74 facilities in the consultation IA, to 167 facilities in the final IA. This increase is due to further work by Defra, the Environment Agency, WRAP and NRW to identify the MRFs considered to be above the threshold and within scope of the proposed regulation.
- Amendments to the original policy proposals because of the consultation process.

The above changes to the impact assessment have altered the estimated costs to businesses. The summary of the revised costs are: costs of implementing the policy: Low: £5.75m, High £12.10m and best estimate of £8.67m. This compares to a total cost in the consultation IA of: Low: £6.1m, High: £10.3m, Best estimate: £8.2m.

The net benefits have altered and are now calculated at £25.3m (over 10 years). For the scenario of benefits and action taken by MRFs, the net benefit in the consultation IA was: £30.9m (£13.1m – £51.5m).

Scope and definitions

In this section we defined MRFs and noted the requirement will only apply to permitted MRFs above a 1000 tonnes per annum. We asked the following questions:

Question 3) Is 1000 tonnes per annum a fair threshold or do you believe a different minimum threshold level should be applied?

Respondent views

Of the 88 consultation responses, 39 (44%) agreed that 1000 tonnes per annum was a fair threshold, 35 (40%) did not agree, and 14 (16%) made no comment or a statement that did not fit into those previously listed.

Of the 35 responses which did not agree:

- 10 felt all MRFs should be included irrespective of size to ensure a level playing field and avoid sending out the message that smaller MRFs can produce low grade outputs without question;
- 3 felt the threshold was too high or too low and proposed a lighter touch regime for smaller MRFs;
- 9 felt the exemption could lead to abuse of the system with larger MRFs sending poor quality waste to small MRFs who fall below the 1,000 tonnes per annum threshold;
- 10 felt the exemption could lead to a proliferation in the number of MRFs handling less than 1000 tonnes a year; and
- 3 disagreed on other grounds or gave no reasons

Looking at the results by respondent type, waste management companies were more likely to disagree with the exemption, and suggest that all MRFs irrespective of size should be included. Local authorities were more likely to disagree on grounds that it could lead to an increase in the number small of MRFs. Reprocessors and manufacturers were more likely to disagree on grounds that the exemptions could lead to larger MRFs sending poor quality waste to smaller MRFs who would fall below the 1,000 tonnes threshold.

Some useful suggestions put forward included:

- The regulations should be the recommended best practice for all MRFs and mandatory for those above the tonnage threshold.
- If the 1,000 tonnes threshold is adopted then it should be kept under review.

Question 4 a) Do you agree with the proposed scope and exclusions?

Of the 88 consultation responses, 33 (38%) agreed with the proposed scope and exclusions, 28 (32%) did not agree, and 27 (30%) respondents made no comment or a statement that did not fit into those previously listed.

Looking at the results by respondent type, waste management companies were more likely to be happy with aspects of the scope of the MRF Regulations, apart from some who were concerned about the de minimis. Local authorities, reprocessors and manufacturers were more likely to disagree principally because they were against the proposed 1000 tonne de minimis (i.e. it could lead to an explosion in the number of 1,000 tonnes MRFs or that the exemption could lead to larger MRFs sending poor quality waste to smaller MRFs who fall below the 1,000 tonnes).

Other grounds for disagreeing were:

- **Types of material** – there were mixed views on whether construction and industrial waste should be excluded, as construction waste is one of the largest streams in England and Wales.
- **Types of facilities** – there were mixed responses on whether dirty MRFs or MBT⁴ facilities should be automatically excluded or included. Some respondents wanted facilities handling material from source segregated collections or separating a single stream such as mixed paper into different paper streams (e.g. waste transfer stations) to be included because they were concerned that there was contamination in these streams as well.
- **Types of waste stream to sampled** – most waste companies felt that it should not apply to residual waste due to health and safety concerns.
- **Definition of MRFs** - There were also a significant number of responses which stated that the proposed definition of a “MRF” in the Regulations was not sufficiently clear, with the risk that the Regulations could unintentionally capture within scope, additional types of material and facilities, e.g. MBT, reprocessors etc.

Those who supported the proposed approach, felt that the collection of data would help to demonstrate that high quality recyclates can be recovered from co-mingled collections and help the EA and Natural Resources Wales in preventing illegal exports.

Question 4b) Is six months a sufficient transition time for MRFs to comply with the sampling requirements?

Of the 88 consultation responses, 60 (68%) agreed that six months was sufficient time for MRFs to comply with the sampling requirement, 7 (8%) did not agree, and 21 (24%) made no comment or a statement that did not fit into those previously listed.

Looking at the results by respondent type, there seemed to be an agreement across the supply chain from local authorities, waste management companies and reprocessors on the proposed transition time of six months.

Health and safety considerations were given as a reason by some waste management companies who disagreed with the proposed transition time. They felt that 6 months was not sufficient and suggested a longer lead time of 12 months. However, most waste management companies felt 6 months was a sufficient lead time, but that it should not be less than this.

Government response

It was evident from responses that further clarification was needed to more tightly define the facilities that will be included within the scope of the regulations. **We are amending the definition of MRF in the regulations to ensure that certain facilities (e.g. MBTs, facilities handling construction waste, reprocessors) are not inadvertently captured.**

⁴ MBT – Mechanical Biological Treatment

A significant number of respondents wanted the Regulations to also apply to separately collected material. We do not have evidence to justify such a significant expansion in scope of the Regulations at this stage, so we plan to retain the focus of the regulations on MRFs.

In the consultation, we proposed to limit the Regulations to permitted MRFs handling more than 1000 tonnes per annum. From the responses, those who disagreed with the exemption for smaller MRFs were concerned about potential loopholes for poor quality material getting to the market. According to our figures, there are 46 MRFs that are not captured by the regulations due to the 1000 tonne de minimis. These facilities only account for about 1% of the tonnage of dry recyclates handled by MRFs in England and Wales; it is not proportionate to include these facilities in the scope of the regulations. This is in line with the Government's wish to exclude micro-businesses from regulation where possible. **We will retain the 1000 tonnes per annum requirement but will continue to keep this under review to allay concerns that this could create a potential loophole.** We would still encourage MRFs below the 1000t threshold to undertake sampling as best practice and in line with sampling and testing guidance being produced by WRAP.

We will retain the six months transition time. The sampling and testing guidance will be published alongside the Regulations, and will provide more detailed guidance and clarification on sampling, including a common methodology for taking samples in a statistically representative manner.

What will MRFs have to measure?

In this section we stated our preference for MRFs to take representative samples of their input, residual and output material and measure the composition of each sample. We asked the following questions:

Respondent views

Question 5) We welcome views on the approach taken to sampling. Do you agree that the input, residual and main output streams should be sampled?

Of the 88 consultation responses, 57 (65 %) agreed that input, residual and main output stream should be sampled, 14 (16%) did not agree and 17 (19%) made no comment or provided a statement that did not directly answer the question.

Looking at the results by respondent type, local authorities, reprocessors and manufacturers and campaign bodies were more likely to agree to the sampling of all the various waste streams - input, residual and output. On the other hand waste management companies were more likely to disagree with the current proposed approach, primarily because they disagreed with the requirement to sample residual waste for operational and health and safety issues.

Question 6) Do you agree that material transferred from one MRF to another, should not be sampled?

Of the 88 consultation responses, 30 (34%) agreed that material transferred from one MRF to another should not be sampled, 46 (52%) did not agree and 12 (14%) made no comment.

Looking at the results by respondent type, local authorities and waste management companies were more likely to agree that material transferred between MRFs should not be sampled. On the other hand reprocessors and manufacturers were more likely to disagree and instead would like to see all material transferred between MRFs sampled.

For those who agreed with the proposal they also provided the following comments or caveats:

- Sampling should be done at least once either by the first MRF as an output or the second MRF as an input. However, to avoid duplicating costs it should not be necessary for both MRFs to sample the waste.
- Some others were concerned that the transfer should not be seen as inadvertently opening up routes for poor quality material to reach the market without being sampled.

Reasons put forward by those who did not agree included:

- Several raised issues around the potential loophole of using the transfer to mask poor quality material passing through MRFs linking this to a possibility of undermining the purpose of the Regulation.
- Some repeated their preference for recyclates to be tested by all MRFs regardless of size and origin of feedstock to ensure quality is monitored throughout the process of sorting through to end use.

Government response

As stated above, we have decided to remove the requirement to sample residual waste on health and safety grounds. We have discussed the reasons why smaller MRFs producing less than a 1000 tonnes will not be included.

We will retain the exclusion that material transferred from one MRF to another should not be sampled as we expect such material to be measured as part of the input at the receiving MRF and once sorted into target material this will have to be sampled by the outgoing MRF before it is passed onto the markets.

We will require MRFs to sample input material for each supplier but it will be up to MRF operators to decide whether to sample on site or prior to delivery.

Sampling and composition testing requirements

In this section, we stated our proposed sampling weights and frequencies by material sample, based on industry practice and feedback. We asked the following questions:

Respondent views

Question 7 a) Do you agree with the proposals on sampling?

Of the 88 consultation responses, 19 (22%) agreed with the proposals on sampling, 49 (55%) did not agree, and 20 (23%) made no comment or a statement that did not fit into those previously listed.

Of the 49 responses which did not agree with the sampling frequencies and weights proposed:

- 35 felt they were too low to achieve sufficiently robust results.
- 4 felt they were too high, and
- 10 disagreed on other grounds.

Looking at the results by respondent type, responses from local authorities and waste management companies were mixed and broadly followed the pattern described above. However, responses from reprocessors were more likely to disagree, with the majority arguing that the proposals were too low.

Alternative sample frequencies and weights were put forward by 14 respondents. These were mainly suggested by reprocessors and their trade associations with 6 of these groups submitting exactly the same higher sampling frequencies and weights through replicated responses (i.e. a quadrupling of the sample frequencies and weights). Alternatives suggested by waste management companies and their trade associations were more mixed; a small number of responses put forward more relaxed proposals although most proposed increases (albeit at a more modest level than reprocessors).

Other comments made in response to this question include the following:

- A wide range of responses highlighted the importance of designing a sampling regime, which balances costs and statistical robustness.
- A significant number of responses from waste management companies and local authorities highlighted the practical difficulties associated with taking large samples and/or raised concerns with the cost implications.
- A wide range of responses identified the need to set down a common methodology within guidance for taking samples in a statistically representative manner.
- A number of responses argued that the sampling requirements on smaller MRFs were proportionately more onerous than on larger MRFs as a result of the time-based

minimum sampling frequency, and that this would put smaller MRFs at a competitive disadvantage.

- A small number of responses sought a commitment from the Government to review the sampling arrangements every two years.
- Alternative approaches to establishing a minimum sampling regime were advocated by a small number of responses.
- Some advocated the requirement to gain accreditation under a quality assurance scheme to ensure consistency across the sampling regime.

Question 7 b) Do you agree with the possibility of sampling reductions where a high degree of consistency is demonstrated?

Of the 88 consultation responses, 44 (50%) agreed with the possibility of sampling reductions where a high degree of consistency is demonstrated, 25 (28%) did not agree, and 19 (22%) made no comment or a statement that did not fit into those previously listed.

Looking at the results by respondent type, responses from waste management companies and reprocessors broadly followed the pattern described above. However, responses from local authorities were more likely to disagree with the proposal.

Reasons given for opposing the proposal included the following:

- 11 respondents said they could not support the possibility of reducing a sampling regime in which they had no confidence.
- Some respondents argued that this proposal could create an incentive to fabricate sampling results.
- A number of responses felt that full sampling was the only way to demonstrate consistency given that input quality, equipment set up etc in MRFs is constantly changing, and they felt that a reduction in sampling would increase the risk of degradation in quality going unnoticed.

Other comments made in response to this question include the following:

- A number of responses highlighted the importance of clearly defining the conditions/parameters for when a reduction is permissible (e.g. what is meant by “a high degree of consistency”?) and the triggers for a return to the full sampling regime (e.g. a change in equipment set up).
- A number of responses discussed a minimum time after which the sampling arrangements could be reduced, with some suggesting a period of 1 – 2 years.
- The importance of continuing with robust auditing arrangements / spot checks and inspections by the Environment Agency was also highlighted.
- Some respondents felt that agreement on any reduction in sampling should be sought from end customers and not just the regulators.

Question 7 c) For MRF operators: do you intend to make use of the opportunity to reduce the prescribed sampling frequency by demonstrating a high degree of consistency in the composition of output?

Of the 88 consultation responses, 18 commented on this question (note – 7 of the 18 respondents to this question did not appear to be MRF operators). Of these 18, 14 respondents indicated they intended to make use of the opportunity to reduce the prescribed sampling frequency whereas 4 did not intend.

Government response

Having carefully considered all comments made to the issues around sampling size and frequencies, we have decided to amend the sampling requirements set down in the Regulations as follows:

Sample weights (kg) – Table 3

	Consultation	Revised
Input	25	60
Residual	20	Not required
Paper	20	50
Glass	10	10
Metal	10	10
Plastic	20	20

Sample frequencies –

Table 4

	Consultation		Revised (pre-2016)		Revised (post-2016)
	Samples per week	1 sample per tonnage throughput	Samples per week	1 sample per tonnage throughput	1 sample per tonnage throughput
Input	2	200	Not required	160	125
Residual	1	100	Not	Not required	Not required

			required		
Paper	1	100	Not required	80	60
Glass	1	50	Not required	50	50
Metal	1	20	Not required	20	20
Plastic	1	20	Not required	20	15

We believe these revised sampling frequencies and weights balance the desire for robustness, with the need to keep costs down and remain practicable for MRF operators. The proposed sampling weights have been derived using a statistically robust formula put forward during the consultation. **As previously stated, we will remove:**

- the requirement to sample the residual waste stream due to concerns with health and safety of sampling staff; and
- the time-based sampling frequency as it is felt this would disproportionately impact small businesses and put them at a competitive disadvantage.

The consultation and draft regulations also included provision for a MRF to reduce sampling – subject to the agreement of the regulator, Environment Agency or NRW – if the MRF could demonstrate a high level of consistency of data and quality. **For the benefit of clarity and simplicity, and in order to have one standard approach to sampling, we have removed the provision for MRFs to reduce sampling.**

The regulations will come into force in early 2014 (March 2014). However, the sampling and reporting requirements will only apply later (from October 2014) to allow MRF operators sufficient time to adjust their operations and comply with the new requirements.

We plan to develop non – statutory sampling guidance and will provide clarification on the methodology for taking samples in a statistically representative manner.

Some responses sought clarity on how the samples are to be spread across different suppliers and output streams. We will specify in the Regulations that operators of MRFs not only measure the total amount of mixed waste material received by that facility during a reporting period but also the amount of mixed waste that is received from each supplier.

We recognise the importance of reviewing the effectiveness of the sampling requirements and plan to monitor this.

Reporting requirements and transparency

This section highlighted how the proposed regulations will deliver transparency on quality. We asked the following questions:

Respondent views

Question 8) Which option do you support on transparency of information from the options below, or do you have an alternative suggestion, and how often do you think results should be sent to the EA

The consultation responses indicated support for the options as follows⁵:

- 5 (6%) agreed with option A - the information retained by the Regulator
- 5 (6%) agreed with option B - MRFs to make information available to customers on request;
- 22 (25%) agreed with option C - EA and Natural Resources Wales to publish the information in some manual/electronic form and regulate the access (e.g. local authorities and reprocessors would need to register for access)
- 57 (65%) favoured option D - EA and Natural Resources Wales to publish the information in some manual/electronic form with unrestricted access. This was the Government's preferred option.

Looking at the results by respondent type, responses from waste management companies and their representative bodies were mixed across the different options. Reprocessors and manufacturers and their representative bodies were more likely to favour option D. The responses from local authorities were mixed with about a third going for option D and the remainder mainly opting for C – EA and Natural Resources Wales publishing information and regulating access. The majority of responses from campaign bodies also favoured option D.

Further comments made in response to this question included:

- The Government should consider the implications of stating contamination levels in waste streams for export and potential implications in respect of competition law;
- Reprocessors should be subject to a complimentary system of transparency, and publication data on e.g. yields by material stream and contamination rates in material they sell themselves;

⁵ The total does not add to 88 as a some respondents chose two or more options

- The need for confidence in the results, whether among local authorities that own or use MRFs, or the wider waste and resources industry, and;
- Government needs to consider how the data is presented to enable users to interpret it effectively.

Government response

We will continue with our preferred option for full transparency as set out in the consultation document. This is key to ensuring the full confidence of all stakeholders in the process, its results and enabling the market to act on the data and so help drive up the quality of recyclates both for use at home and exports.

Work has started on developing a reporting tool for MRFs to report their sampling results. This work is being undertaken by WRAP with support from Defra, EA and Natural Resource Wales. Consideration will be given as to how the data can best be presented to enhance understanding and transparency. We expect the tool to be available in time for the first reporting period.

Audit requirements and enforcement

In our proposals, we put forward suggestions for an annual independent audit to provide confidence on the sampling and testing regime.

Respondent views

Question 9 a) Do you agree with proposed audit requirements?

Of the 88 consultation responses, 35 (40%) agreed with the proposed audit requirements, 40 (45%) did not agree, and 13 (15%) made no comment or a statement that did not fit into those previously listed.

Looking at the results by respondent type, responses from local authorities and reprocessors were more likely to disagree with the proposed audit requirements. However, responses from waste management companies were more likely to agree.

A general theme that ran through the responses was the need for regular unannounced visits and site inspections by the regulator – either the EA or NRW, and calls for audits to be independent; i.e. for the EA/NRW's involvement in either verifying the audits or undertaking the audits themselves as part of permitting compliance checks. It was also felt that any costs associated with undertaking this audit activity had to be proportionate and not outweigh the benefits. A theme in a number of responses was the preference for the EA and NRW to undertake audits and site inspections as part of their wider compliance checking of MRFs under the Environmental Permitting regime.

Question 9 b) If not, do you have alternative suggestions?

Alternative suggestions put forward included:

- In England, the EA to undertake the audit role as part of its regulator function in respect of both the Permitting and Packaging Regulations.
- Financial information should be cross checked against the sample outputs and possible TFS breaches should be identified.
- Competence training for 'samplers' could be introduced through the existing Environmental Permitting Programme waste operators technical competence schemes.
- There should be two visits a year, including unannounced visits, from the regulator. The regulator should also take physical samples of the input and output material and interview operatives at MRF (not just managers) whilst on site and observe sampling in practice.
- Audits should conform to ISO 14001, as part of an Integrated Management System (IMS) also covering quality control and health and safety aspects.

Government response

We recognise that the regulated community and other stakeholders would welcome an approach led by the Environment Agency and Natural Resources Wales as this will provide confidence and consistency in the system. Confidence in the data on quality is critical to success of the MRF Regulations, otherwise the market will not act on the information. **We have decided therefore, to remove the requirement for an external independent audit. Instead, the function to inspect will be undertaken by EA and Natural Resources Wales under their existing regulatory powers as part of their permitting regime, which would include inspections.**

Regulators will issue operational instructions to their staff on what is required in an inspection, emphasising that reliable sampling data and reporting is essential. Subject to introduction of a charging scheme to cover their costs, the regulators have agreed to plan one pre-arranged inspection and one unannounced inspection per year, plus additional compliance checks if material quality is especially poor, or if otherwise considered necessary. Our expectation is that larger and higher risk sites would receive greater attention and good performers will, in time, need fewer visits than twice per year. Associated charging costs for inspections by the Regulator will be consulted upon separately by the Environment Agency in early 2014. Indicative costs are detailed in the final IA.

Regulators will undertake proportionate enforcement in accordance with their published enforcement and sanctions statement⁶ as for other breaches of environmental permit conditions. If operators are not implementing sampling guidance and the reporting requirements in the permit based on them, then the regulator would in the first instance likely provide advice. If that is not sufficient, then an enforcement notice may be served. Sanction options include verbal and written warnings, formal caution and prosecution. Financial benefits accruing from a breach would be weighed in assessing what action to take.

⁶ <http://www.environment-agency.gov.uk/business/regulation/31851.aspx>

Additional considerations

This section considered very briefly the setting of the EU End of Waste Criteria and linked this to acceptability of lowest level of material quality by reprocessors. We asked the following questions:

Respondent views

Question 10) Do you think that minimum standards should be included in this proposal? If yes, what would your proposed maximum contamination percentage be for paper, plastics, metals and glass, and how should they be developed for the supply chain? In this instance, we are assuming that contamination levels equate to non-target and non-recyclable material.

Of the 88 consultation responses, 45 (51%) felt minimum standards should be included in this proposal, 30 (34%) did not agree, and 13 (15%) made no comment or a statement that did not fit into those previously listed.

Of the 45 responses that wanted minimum standards:

- Some responses wanted minimum standards to be described in such a way as to work with the Transfrontier Shipment Regulations as well as any End of Waste criteria to aid the export of good quality recyclable material.
- Some respondents suggested that an independent industry body should be set up for each product material and that a time related target for developing the standards might be appropriate.
- For paper, a number of reprocessors wanted the adoption of the EU standard EN643 as this sets out the minimum requirements for MRF paper.
- Others commented on the complexity and variability of the market place which suggests that standards should be different dependent on the end use.
- Concerns were expressed over the time frame for setting standards.
- Some of the comments highlighted that contamination levels may vary according to the age of MRFs; MRFs that are regularly at the low end of the quality spectrum could be subject to further inspections to find out exactly what is happening.
- There was some acceptance that it would be difficult to come up with maximum contamination percentage for plastics.

Various reasons were put forward by those who did not agree with the setting of minimum standards by government. They contended that the market was best left to determine quality standards and not legislation. Some responses referred positively to the Quality

Action Plan and the voluntary grading system proposed as the way forward. Some commented that if quality specifications were included in the Regulations, they would never keep pace with the market, producing a constant demand to update the Regulations. Some respondents felt that the set up of minimum standards would be too costly and bureaucratic.

Government response

The underlying purpose of these regulations is not to set minimum standards but rather to provide a mechanism for transparency and more meaningful information on the quality of recyclates. The market will itself determine the standards that are required and those standards need to be flexible in order to reflect the costs involved and the need for different quality specifications for different products. We would like to see the development of a flexible system that responds to the information that will become available through the introduction of the MRF regulations. This will provide a clear and effective means of communicating the results of the sampling regime.

As highlighted in the QAP (England only) monitoring the results of the MRF regulations to grade MRF outputs according to their quality would bring a range of benefits to both buyers and sellers of recyclates. The Waste Resources Action Programme (WRAP) will explore with the supply chain including LAs, reprocessors and waste management industry, the idea of developing a voluntary system for grading the main material streams (paper, plastic, glass and metal). Any such system could also be aligned with various waste policies such as the End of Waste criteria being developed under the revised Waste Framework Directive (e.g. Grade A = end of waste material), enforcement of export controls, level of separate collection and the PRN/PERN system) and build upon / link to other industry standards on quality (e.g. PAS 101, EN 643).

Question 11) If you have any other comments or observations on what is proposed here, please provide full details?

Of the 88 consultation responses, 31 respondents provided further comments. These were varied, and touched on issues raised in the consultation particularly around:

- Quality of output material.
- Sampling methodology.
- A need to level the playing field between the way PRNs (Packaging Recovery Note) and Packaging Export Recovery Notes (PERNs) are treated. Some responses suggested that the system creates commercial drivers that favour exports over the UK market.
- The Environmental Permitting Regulations should be consolidated into a new statutory instrument.
- The matching of outputs from the Regulations with the inputs into Waste Data Flow to help future policy development.
- Reporting material that is rejected and its end destination

Some respondents argued for a more holistic approach to push quality issues back up the supply chain to customers and businesses including greater enforcement of Transfrontier Shipment Regulations.

Government response

As part of the wider, ongoing review of the Packaging regime, we are exploring making amendments to the PRN and PERN system to even out any disparity in the playing field between exports and domestic reprocessing.

Local authorities would be able to use the results from the MRF regulation to help demonstrate where co-mingled collection of dry recyclates followed by sorting at the MRF is delivering the requirements of the rWFD and promoting high quality recycling.

We are exploring options for improving the inputs to Waste Data Flow to improve ease of use of the system and usefulness of the data. One possible benefit of this would be to help improve information on the reject rates at MRFs, one of the objectives outlined in the QAP.

The Welsh Government has a policy preference for separate collection as discussed on page 7 of the consultation document: it also recognises that where co-mingled collections and MRF sorting take place the inputs and outputs should be subject to monitoring with a view to promoting high quality recycling.

Summary of regulatory changes

We will proceed with making the requirements to monitor quality mandatory in order to support compliance with the rWFD objectives of promoting high quality recycling and the linked requirements relating to separate collection. The MRF Regulation will be incorporated into the Environmental Permitting (England and Wales)(Amendment) Regulations 2014.

We will amend the definition of MRF in the regulations to improve clarity and ensure that certain facilities are not inadvertently captured.

We will retain the 1000 tonnes per annum de minimis but will continue to keep this under review to allay concerns that this could create a potential loophole.

We will retain the six months transition time.

We will retain the exclusion that material transferred from one MRF to another should not be sampled, as we expect such material to be measured as an input at the receiving MRF and once sorted into target material will have to be sampled before it is passed onto the markets.

Having carefully considered all comments about sampling size and frequencies, we have decided to amend the sampling requirements set down in the Regulations as shown in Table 4.

We will remove the time-based sampling frequency, as this disproportionately impacts small businesses.

We will also remove the requirement to sample residual waste on health and safety grounds.

We plan to develop sampling guidance alongside the Regulations, and to provide clarification including a common methodology for taking samples in a statistically representative manner.

We will continue with the Government's preferred option for full transparency as set out in the consultation document.

We will remove the regulatory requirement for an external independent audit. Instead, the function to inspect will be undertaken by EA and Natural Resources Wales under their existing regulatory powers as part of their permitting regime.

We do not intend to set minimum quality standards as the market failure is the lack of information on quality, which these regulations are designed to address.

Annex 1 - list of respondents

1. John Wade Group
2. Chase Plastics Limited
3. Peninsula Waste Savers Ltd
4. Valpak
5. Oxfordshire Waste Partnership
6. SITA UK
7. British Plastics Federation
8. North London Waste Authority
9. Commercial Recycling
10. North East Sustainable Resources Board
11. DS Smith Recycling
12. London Borough of Hammersmith & Fulham
13. British Glass
14. Kent Waste Partnership
15. Veolia Environmental Service
16. Hampshire Waste Disposal Authorities
17. Waste Transition Limited
18. Northamptonshire Waste Partnership
19. British Retail Consortium
20. The Packaging Society, Environment and Safety Forum
21. Axion Consulting
22. Aylesford Newsprint
23. Smurfit Kappa Recycling UK
24. Closed Loop Recycling
25. Shanks Waste Management
26. Local Authority Recycling Advisory Committee
27. Leeds City Council
28. The Chartered Institution of Wastes Management (CIWM)
29. Plymouth City Council
30. Lambeth Council
31. Suffolk Waste Partnership
32. Resource Futures
33. Hertfordshire Waste Partnership
34. British Soft Drinks Association
35. Alliance for Beverage Cartons and the Environment (ACE) UK
36. Shropshire Council
37. Alupro
38. Packaging and Films Association (PAFA)
39. Leicestershire Waste Partnership
40. Cambridgeshire & Peterborough Waste Partnership (RECAP)
41. Kier Services
42. Greater Manchester Waste Disposal Authority
43. Merseyside and Halton Waste Partnership

44. Environmental Services Association (ESA)
45. Society of Motor Manufacturers and Traders (SMMT)
46. National Association of Waste Disposal Officers (NAWDO)
47. AmeyCespa Ltd
48. Waste Action Forum
49. Association for Public Service Excellence (APSE)
50. Resource Association
51. Coca-cola Enterprises
52. Palm Recycling Limited
53. Viridor
54. Recoup
55. Novelis Recycling
56. Kirklees Council
57. United Kingdom Without Incineration Network (UKWIN)
58. Campaign for Real Recycling
59. Food and Drink Federation
60. Confederation of Paper Industries
61. Eco Plastics
62. Liverpool Law Society
63. Powerday Plc
64. Local Government Association LGA
65. Western Riverside Authority
66. Tonbridge & Malling Borough Council
67. Thanet District Council
68. Dartford Borough Council
69. Canterbury City council
70. Seven Oaks
71. Maidstone Borough Council
72. Dover District Council
73. Shepway District Council
74. Tunbridge Wells Borough Council
75. Gravesham Borough Council
76. British Council of Shopping Centres
77. Carmarthen CC
78. Pembrokeshire County Council
79. Amgen Cymru
80. Welsh Local Government Association (WLGA)
81. Cardiff Council
82. Central Wales Waste Partnership
83. Natural Resources Wales
84. Cylch
85. Blaenau Gwent Council
86. Caerphilly Council
87. Monmouthshire
88. Royal Borough of Kensington and Chelsea