

Department for Environment, Food and Rural Affairs

Welsh Government

Consultation on changes being made to UK legislation to reflect amendments to the Waste Framework Directive from Commission Directive (EU) 2015/1127

Government response

February 2016

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The Government held a consultation between 5 and 29 January 2016 inclusive regarding changes being made to UK legislation to reflect an amendment to the EU Waste Framework Directive (2008/98/EC)¹ (“the Waste Directive”) from Commission Directive (EU) 2015/1127.

Background

The Waste Directive provides the legislative framework for the collection, transport, recovery and disposal of waste, and includes a common definition of waste. The Directive defines the term ‘recovery’ as “any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy”. Annex II of the Waste Directive sets out a non-exhaustive list of recovery operations, which are referred to as R1 to R13. Operations that use waste principally as a fuel to generate energy are classed as R1 under the list.

In order for an incineration facility dedicated to the processing of municipal solid waste to be classified as recovery (as an ‘energy from waste’ plant, or EfW), the operator would first need to apply to the Environment Agency (if in England) or Natural Resources Wales (if in Wales) for what is commonly known as R1 status. The plant would need to meet a specific energy efficiency threshold included in the formula for calculating energy efficiency (“R1 formula”) that is set out in Annex II of the Waste Directive. The R1 formula calculates the recovery of energy from waste through incineration to meet the recovery threshold of 0.65 for installations permitted after 31 December 2008. Any plant which falls below this threshold is classed as a disposal installation.

Operators of UK plants do not have to obtain R1 status – it is voluntary. There are two main reasons why a plant may wish to obtain R1 accreditation. Under The Producer Responsibility Obligations (Packaging Waste) Regulations 2007, an EfW plant can only become accredited to issue Packaging Recovery Notes (PRNs) against packaging waste they process if it has R1 status. A plant may therefore apply for R1 status in order to do this and hence increase its revenue. A plant may also apply for R1 status in order to be classified as a recovery operation and demonstrate the efficiency and environmental sustainability of its facilities. R1 status is needed for plants to import and use waste from other Member States, however, UK plants do not currently import waste.

Differences in climate across the EU mean that the production and use of energy from waste materials varies. It is technically more difficult to produce electricity from waste in a warm climate than in a cold climate. EfW plants in cold climates therefore have an advantage in both producing and using energy more efficiently. The Joint Research Centre of the European Commission advised that to achieve a level playing field in the EU, it was

¹ Directive 2008/98/EC of the European Parliament and of the Council on waste: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0030:en:PDF>

reasonable to compensate EfW plants affected by the impact of local climatic conditions by adding a Climate Correction Factor (CCF) into the R1 formula.

Directive 2015/1127 amends Annex II of the Waste Directive. It inserts a CCF into the R1 formula, which will mean that some disposal incineration installations would now meet the R1 formula threshold and obtain R1 status if they applied for accreditation.

These are technical amendments to legislation which will result in little or no impact to producers and operators in England and Wales; no existing EfW plant with R1 status will lose its accreditation. The amendment seeks to redress an imbalance that mainly affects EfW plants in Southern European countries which have warmer climates.

The proposed changes

The Government identified two Acts of Parliament and a number of statutory instruments which contain references to 'recovery' and 'Waste Directive'. References to the Waste Directive are to the Directive as it was on the date when the UK legislation containing the reference was made or last updated and this approach does not automatically take into account subsequent amendments to the Waste Directive.

The Government proposed to update the references to 'Waste Directive' and 'recovery' to ensure the references relate to the Waste Directive as updated by Directive 2015/1127.

Defra will amend the following instruments for England:-

- The Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894);
- The Waste and Emissions Trading Act 2003 (Amendment etc.) Regulations 2013 (S.I. 2013/3113);
- The Marine Licensing (Exempted Activities) Order 2011 (S.I. 2011/409).
- The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675);
- The Waste (England and Wales) Regulations 2011 (S.I. 2011/988).

The Welsh Government will amend the following instruments for Wales:-

- The Landfill Allowances Scheme (Wales) Regulations 2004 (S.I. 2004/1490 (W.155));
- The Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W.138));
- The Marine Licensing (Exempted Activities) (Wales) Order 2011 (S.I. 2011/559 (W.81));
- The Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011 (S.I. 2011/1014 (W. 152)).
- The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675);
- The Waste (England and Wales) Regulations 2011 (S.I. 2011/988).

This Directive applies throughout the UK and Gibraltar. Gibraltar, Scotland, Northern Ireland and Wales will legislate within their own jurisdictions. However, Defra will be making changes for the UK for the following UK-wide legislation:-

- Environmental Protection Act 1990;
- Marine and Coastal Access Act 2009;
- The End of Life Vehicles Regulations 2003 (SI 2003/2635) ;
- The End-of-Life Vehicles (Producer Responsibility) Regulations 2005 (SI 2005/263);
- The Climate Change Agreements (Eligible Facilities) Regulations 2012 (SI 2012/2999);
- The Waste Electrical and Electronic Equipment Regulations 2013 (SI 2013/141).

We are required to make these changes by 31 July 2016.

We asked a wide selection of stakeholders the following question:

“Do you have any concerns about the way we propose to transpose the new EU Directive? If so, please let us know.”

The responses

Defra received three responses to the consultation. One, having consulted their members, was content with the transposition method proposed.

The other two made almost identical observations. They were content that the CCF applied to the R1 formula so that all facilities across Europe are assessed on a level playing field appeared to be based on scientific fact and was accepted as being reasonable.

They were concerned that the determination of the CCF relies on the availability of 20 years of Heating Degree Days (HDD) data for both the maximum and minimum temperature recorded at the actual location of the facility. They felt that it was likely that this level of data would not exist at some sites or indeed most of them depending on their locations. It was suggested that further consideration needs to be given to this and perhaps the nearest official recording weather data station used until there is 20 years of robust data at the actual site itself.

One of the responses added that contractors with energy recovery facilities in the UK had commented that the application of the CCF was unlikely to have any bearing on the status of their respective facilities given the UK’s climate.

The Welsh Government received two responses, both of which were supportive of the proposed changes to transpose the Directive.

Government response

Our response is that achieving R1 status is voluntary and all the plants that have already achieved this status have done so without the CCF. We understand that HDD data may

be available commercially. Where site specific HDD data is not available, the regulator may accept data from the nearest recording weather data station. It is worth pointing out that because of the UK's climate it is highly unlikely that the CCF will be a determinative factor in a facility achieving R1 status.

Given the support by the respondents, Defra and the Welsh Government will proceed to make the changes as outlined in the consultation to introduce legislative amendments to transpose the Directive by 31 July 2016.



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