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## Consultation Document

# Consultation on draft Statutory Guidance on Separate Collection of Waste Paper, Metal, Plastic and Glass

Date of issue: **28 April 2014**

Action required: Responses by **21 July 2014**

## Overview

This draft guidance has been prepared under regulation 15 of the Waste (England and Wales) Regulations 2011 which allows the Welsh Ministers to give guidance on the discharge of the duties in regulations 12 to 14.

These provisions transpose articles 10 and 11(1) of the Revised Waste Framework Directive in relation to the setting up of separate collections for at least the following waste materials: paper, metal, plastic and glass.

The aim of the consultation is to ensure that those affected by this guidance have the opportunity to consider and offer their views regarding its contents, and to suggest additions or amendments.

## How to respond

Please respond to the consultation by sending your response to:

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Alternatively you can email:  
[WasteStrategy@wales.gsi.gov.uk](mailto:WasteStrategy@wales.gsi.gov.uk)

## Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

The consultation documents can be accessed on the Welsh Government website at:  
[www.wales.gov.uk/consultations](http://www.wales.gov.uk/consultations)

The Revised European Waste Framework Directive 2008/98/EC [revised EU Waste Framework Directive \(revised WFD\)](#)

The Waste (England and Wales) Regulations 2011 [www.legislation.gov.uk/uksi/2011/988/contents/made](http://www.legislation.gov.uk/uksi/2011/988/contents/made)

The Waste (England and Wales) (Amendment) Regulations 2012  
[www.legislation.gov.uk/uksi/2012/1889/contents/made](http://www.legislation.gov.uk/uksi/2012/1889/contents/made)

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## Data protection

### How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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## **Introduction**

In March 2014 Alun Davies, AM, Minister for Natural Resources and Food agreed to the publication of, for consultation, draft guidance on the duties of establishments and undertakings in relation to the separate collection of waste paper, metal, plastic and glass.

As a starting point, it should be borne in mind that in accordance with Article 11(1), paragraph 3 of the Waste Framework Directive, which is subject to Article 10(2), there is a duty upon the UK to have in place by 2015 separate collection for at least waste paper, metal, plastic and glass.

This draft guidance sets out the method which Welsh Government believes will enable local authorities, private waste management companies and social enterprises that collect, transfer or receive waste paper, metal, plastic and glass to comply with their duties under the Waste (England and Wales) Regulations 2011. It is the duty to have separate collection for at least waste paper, plastic metal and glass under Regulation 13.1. This applies from January 2015. It is important that all collection systems remain as simple and straight forward as possible whilst being compliant with the law.

## **Background**

The Welsh Government and Defra transposed the requirements of the European revised Waste Framework Directive 2008/98/EC via the Waste (England and Wales) Regulations 2011, and the Waste (England and Wales) (Amendment) Regulations 2012.

Towards Zero Waste, Wales' overarching waste strategy document for Wales outlines the policy objective for Wales to produce high levels of clean recycle to drive markets. The policy objective states that recycles will need to be separated out at source so they are of a high quality, where each material is collected separately and for this to be achieved through effective collections systems for sources separation across all sectors.

## **Purpose of Statutory Guidance**

The purpose of this guidance is to provide relevant establishments and undertakings clear guidance to support the decisions required to enable them to comply with what is legally required under the regulations in relation to the collection of the four waste materials; paper, metal, plastic and glass.

## **Statutory Guidance**

### **Statutory Guidance on Separate Collection of Waste Paper, Metal, Plastic and Glass**

#### **References**

“The four waste materials” means paper, metal, plastic and glass;

“The Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, as amended;

“The 2011 Waste Regulations” means the Waste (England and Wales) Regulations 2011, as amended by the Waste (England and Wales) (Amendment) Regulations 2012; and

“Waste collection authorities” means for any county or county borough, the council of the county or county borough.

#### **Introduction**

1. This guidance is intended to inform decisions that establishments or undertakings that collect, transport or receive the four waste materials (“relevant establishments or undertakings”) or, in the case of Waste Collection Authorities, if they arrange for the collection of waste, make from 1 January 2015, in order to facilitate and improve recovery (i.e. achieve high quality recycling) of the four waste materials. Relevant establishments or undertakings will include local authorities, private waste collection companies and social enterprises that collect, transport or receive any or all of the four waste materials.
2. This guidance covers regulations 13 and 14 of the 2011 Waste Regulations. These provisions transport articles 10 and 11(1) of the Waste Framework Directive into domestic law.
3. It is important to recognise that the 2011 Waste Regulations do not prohibit the use of all co-mingled collections of the four waste materials from 2015. Rather they establish separate collection as the default position, and set out the conditions under which the relevant establishments or undertakings can deviate from that default position. However, the regulations set a high bar.

4. There is no expiry date for this guidance. The guidance will be reviewed if there are major legal changes, for example if the underlying European law changes or new case law emerges.

## **Legal Background**

5. This document is statutory guidance to relevant establishments or undertakings in Wales and is made using the Welsh Ministers' powers under regulation 15 of the 2011 Waste Regulations. The Regulations in turn implement part of the Waste Framework Directive.
6. Under Article 11(1) of the Waste Framework Directive the UK must take measures to promote high quality recycling, and to accomplish this shall set up separate collections of waste <sup>1</sup>.
7. By 2015 the UK is required to set up separate collection for at least the four waste materials subject to two tests:
  - a) it is necessary to ensure that waste management is carried out in accordance with Article 4 and Article 13 of the Waste Framework Directive, and it is necessary to facilitate or improve recovery; and
  - b) it is technically, environmentally and economically practicable.
8. In Wales these obligations are fulfilled through the system created by the Waste Regulations 2011 (namely regulations 12 to 14). From 1 January 2015 onwards, this system places duties on all establishments and undertakings that collect the four waste materials and on waste collection authorities when they make arrangements for their collection.
9. All reasonable measures must be taken to ensure that the separate streams that have been collected are not then mixed with other waste or other material with different properties. This duty applies to all relevant establishments and undertakings that collect transport or receive waste which has been separately collected.
10. The 2011 Waste Regulations refer back to Articles 4 and 13 of the Waste Framework Directive.
11. Article 4 sets out the waste hierarchy. The hierarchy is a way of classifying waste management priorities, putting the most important first, in order to promote the best overall environmental outcome. The hierarchy is: (a) prevention; (b) preparing for re-use; (c) recycling; (d) other recovery, e.g. energy recovery; and (e) disposal.
12. Article 13 requires the UK to take necessary measures to ensure that waste management is carried out without endangering human health or harming the environment and, in particular:
  - a) Without risk to water, air, soil, plants or animals;

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<sup>1</sup> This is subject to the pre-requisites of being 'technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for relevant recycling sectors.'

- b) Without causing a nuisance through noise or odours; and
  - c) Without adversely affecting the countryside or places of special interest.
13. The separate collection obligations are enforced by Natural Resources Wales, through compliance, stop and restoration notices (under Regulations 38, 39 and 40 respectively of the 2011 Waste Regulations), and ultimately by way of criminal proceedings for breach of such notices (under Regulation 42 of the 2011 Waste Regulations).

### **Key Principles**

14. The primary aim of the 2011 Waste Regulations, in line with the aim of the Waste Framework Directive, is delivering the best environmental outcomes and the protection of the environment and human health.
15. Prioritising recycling over disposal is also a key aim of the 2011 Waste Regulations, which will most probably assist achieving the higher objective of the best environmental outcome. Likewise, high quality recycling is also a key principle and another means of achieving the main object of protecting the environment and human health.
16. Where relevant establishments or undertakings collect any of the four waste materials or arrange for them to be collected, they should collect them in a way so as to maximise the amount of materials that can be recycled.
17. The relevant establishment or undertaking should ensure that the four waste materials are collected in a way which keeps them separate from each other and from other sources of waste. This requirement does not hold where separate storage is not necessary to improve the quality of recycle.
18. The four waste materials are required to be kept separate if necessary to:
- a) ensure that waste undergoes recovery operations in accordance with Article 4 (the waste hierarchy) and Article 13 (protection of human health and the environment) of the Waste Framework Directive, and
  - b) to facilitate or improve recovery.
19. Facilitating and improving recovery (i.e. providing high quality recycling) will include aiming to not only increase the quantity but also the quality of the four waste materials. This is explained further on in this guidance.
20. If keeping the four waste materials separate is necessary to achieve the above, it must also satisfy the test of being technically, environmentally and economically practicable.
21. The requirement for separate collection does not mean that a separate bin is needed for each material. Separate collection can be done, for example, through a mixture of household/business sort and kerbside sort as well as from bring sites and civic amenity sites. In determining a

suitable collection method, waste collection authorities should note that nothing in the 2011 Waste Regulations detracts from the basic duty set out in section 45 of the Environmental Protection Act 1990 to arrange for the collection of household waste, and of commercial waste by request.

22. The terms “necessary”, “practicable”, and “all reasonable measures” are value judgements. The relevant establishment or undertaking will need to consider local conditions and look at what can be achieved in comparable situations elsewhere in Wales or the rest of the UK.
23. These judgements should not be taken lightly. Where separate collection is considered necessary in accordance with Regulation 13(4) and 14(2) of the 2011 Waste Regulations, the assessment of “practicability” then has to be made robustly. Relevant establishments or undertakings should consider not just whether separate collection is practicable by 2015, but also when it may become practicable, for which streams it would be practicable, and in which neighbourhoods or locations it would be practicable. The requirements do not require an all or nothing approach. Relevant establishments or undertakings should seek to deliver the best environmental outcome that is practicable.
24. Every relevant establishment or undertaking that does not separately collect waste paper, metal, plastic or glass should actively consider how much collection is practicable and whether separate collection would improve the quantity of material that could be recycled or reused, and the quality of recyclate. Separate collection would most likely achieve a better environmental outcome as a result of providing higher quality recyclate but these considerations must be taken on a case by case basis.
25. Each waste stream should be assessed in turn. Some relevant establishments or undertakings may conclude that a hybrid approach is appropriate: separately collecting some streams, such as glass, whilst co-mingling others such as plastics and metals and then separating them to high quality standards in a subsequent treatment process. The different forms of plastic may deserve particular attention – including how to achieve high quality for each type of plastic, and the TEEP considerations in respect of separate collection.
26. There are no specific requirements on how decisions should be documented. However, it is best practice for relevant establishments or undertakings to audit their decision-making processes, identifying the evidence used and the timetable for review. This will enable them to justify decisions to residents and, where necessary, to the regulator, and provide an evidence base for any legal challenge to those decisions. A suitable evidence base could include for example: the council papers about relevant decisions; the business case for an in-house investment or the specification for any tendered collection service; assessment of the current and historical collection method; information about Materials Recovery Facility performance; information about relevant technological changes; information about economic assessments of options and information on environmental impact of options, etc.



27. Under regulations 38 and 39 of the 2011 Waste Regulations, Natural Resources Wales may issue either a compliance notice or a stop notice to an establishment or undertaking which collects, transports or receives waste paper, glass, plastic or metal in contravention of regulation 13(2) and 14(1) of the 2011 Waste Regulations. Natural Resources Wales can also issue restoration notices, under regulation 40 of the 2011 Waste Regulations, to establishments and undertakings which collect, transport or receive waste paper, glass, plastic or metal in contravention of regulation 14(1).

## **Detail**

### Carrying out the assessment

28. All relevant establishments or undertakings will need to consider how the new duty affects them before 1st January 2015. Where, in the opinion/judgment of the relevant establishment or undertaking it is not necessary or, if necessary it is not technically, environmentally or economically practicable, for the relevant establishment or undertaking to separately collect at that time, this decision should be reviewed from time to time, and action taken accordingly. There is a natural life-cycle to investment decisions in waste services and infrastructure. The separate collection duty should be considered during early discussions about service changes, for example: renewal or extension of existing contracts, vehicle fleet renewal, entry into waste management partnerships with other authorities, or potential investment in new infrastructure or working practices. Over time, changes in technology will also affect both necessity and practicability.

### Assessing what is “necessary”: does separate collection facilitate or improve recovery?

29. In addition to separate collection being necessary to ensure waste undergoes recovery operations in accordance with articles 4 and 13 of the Waste Framework Directive, it must also be necessary to facilitate and improve recovery. Facilitating and improving recovery includes the key aim to increase the quality of the four waste materials – in order to achieve high quality recycling.
30. Two or more of the waste streams may be collected using a co-mingled system if the system achieves high quality recycling. The bench-mark of “high quality” should be taken as meaning that the recyclate is similar in both quality and quantity to that achieved with good separate collection and is therefore able or capable to be used by reprocessors for turning back into a product of similar quality to what it was originally. Examples include:
- The use of recovered glass in re-melt applications;
  - The separation of recovered plastic into individual polymers to produce, for example, new food and drinks containers;
  - The use of recovered paper for the production of new paper products.

31. Subject to available separation technology, the co-mingled collection of certain dry recyclates (e.g. metal and plastic) may be possible, if these materials are being separated to high quality standards in a subsequent treatment process. However, the requirement for high quality recycling makes highly improbable that the co-mingled collection of bio-waste and other 'wet' waste streams with dry streams such as e.g. paper will achieve high quality recycling. Technology for separating glass from other waste components varies significantly across the country and will continue to develop. However co-mingling glass will not usually lead to high-quality recycling of all of the glass component. In addition it often leads to contamination of other streams.
32. Co-mingled collection of glass together with paper or plastic may constitute high-quality recycling where the relevant establishment or undertaking can demonstrate that a similar tonnage of:
- recycled glass cullet is suitable for use as feedstock in the glass producing industry or other re-melt applications;
  - recycled paper is suitable for use as feedstock in the paper producing industry; and
  - recycled plastic is suitable for use as feedstock in the plastic producing industry;
- to that achievable through separate collection.
33. In order to assess whether separate collection is necessary, relevant establishments or undertakings will be able to access data on the quality of input and output from all Materials Recovery Facilities (MRFs) that deal with over 1,000 tonnes of materials a year. Relevant establishments or undertakings should use and document this new information as one of their considerations in deciding on the necessary collection system. This data will be available under amendments to the Environmental Permitting (England and Wales) Regulations 2010 dealing with MRFs, which are intended to come into force in October 2014, with the first quarter's data available from February 2015.
34. Relevant establishments or undertakings can compare the standard of recyclate so obtained with the standard of recyclate that can be achieved via separate collection in comparable locations. They can also compare whether high quality recycling is being achieved comparable to that obtained from separate collection. Information may be obtained through the WRAP website [www.wrap.org.uk](http://www.wrap.org.uk) or alternative sources may be used.

#### Assessing what is "Practicable"?

35. Where separate collection is "necessary" as discussed above the relevant establishment or undertaking should adopt the best environmental outcome that is technically, environmentally and economically practicable for the area it covers.

36. In a recent case<sup>2</sup> which concerned a challenge to the legal duty placed on relevant establishments and undertakings to separately collect waste, the court interpreted the meaning of 'practicable'. It stated 'in common parlance, practicable means more than merely convenient, useful or even practical; but rather feasible or capable of being done'.

#### Technical, environmental and economic practicability considerations

37. When considering what is practicable the relevant establishment or undertaking should aim for the best environmental outcome and consider what is technically, environmentally and economically practicable. In this context "practicability" has a specific meaning which is set out in paragraph 4.4 of the European Commission's guidance<sup>3</sup>.
38. The definition of practicability does not allow for householder or business preferences about collection methods.

'Technically practicable' means that the separate collection may be implemented through a system which has been technically developed and proven to function in practice.

'Environmentally practicable' means the added value of ecological benefits justifies possible negative environmental effects of the separate collection (e. g. additional emissions from transport).

'Economically practicable' refers to a separate collection which does not cause excessive costs in comparison with the treatment of a non-separated waste stream, considering the added value of recovery and recycling and the principle of proportionality.

39. Relevant establishments and undertakings, including Waste Collection Authorities, may consider the following (non-exhaustive) list of issues:

**a. Differences in capital and running costs between separate collection and co-mingled collection methods**

A consideration for moving to separate collection on 1 January 2015 is likely to be the costs associated with changes to existing contracts and infrastructure. The cost of altering contracts is a consideration in determining practicability; however, subsequent savings (derived from increased income for higher quality recyclate) may result in a relatively short pay-back period for the costs of the change.

Where waste collection is contracted out, the prequalification criteria and specification for tenders should normally be flexible enough to allow for separate collection where this is necessary in order to secure high quality recycling. This will enable the market to feed into the

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<sup>2</sup> 'R (on the application of UK Recyclate) v Secretary of State for the Environment, Food and Rural Affairs and the Welsh Ministers [2013] EWHC 425 (Admin); see paragraph 18 of the judgment.

<sup>3</sup> Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste. At: <http://ec.europa.eu/environment/waste/framework/guidance.htm>

economic assessment of what is “technically, environmentally and economically practicable” – “TEEP”.

In making a determination about practicability, relevant establishments and undertakings who have entered into contracts since the 2011 Waste Regulations were introduced need to be mindful that in itself this is not a justification for continuing to co-mingle. The costs of switching from a co-mingled recycling service to a separate collection recycling service should be considered on its merits and not be distorted by contractual or other obligations that the undertaking has entered into since the introduction of the 2011 Waste Regulations. The European Commissions' guidance at paragraph 4.4 provides some helpful commentary. It states *"economically practicable" refers to a separate collection which does not cause excessive costs in comparison with the treatment of a non-separated waste stream, considering the added value of recovery and recycling and the principle of proportionality.*"

Relevant establishments and undertakings are advised to consider very carefully pending actions that may impede their ability to comply with the new duty from the start of January 2015, e.g. when considering entering into any new or extended contract with MRF operators.

**b. Congested streets, flats and houses of multiple occupation.**

Full kerbside sort or other types of separate collection systems may not be practicable for waste collection in some congested streets, although there are examples where kerbside sort local authorities have found a solution to this. Where space for containers is at a premium, or where rubbish chutes are used, this may also limit opportunities for household or business separate collection.

In such circumstances relevant establishments or undertakings should consider the practicability of careful timing of collections, on-street recycling points and the partial separation of recyclate, for example, separating glass from other waste streams.

The relevant establishment or undertaking should also consider the practicability of different collection options in different parts of the area they serve, and changes that can be made to the timing of collections.

**c. Very dispersed communities**

It may not be economically practicable to collect fully separate waste streams from very dispersed communities or businesses with existing vehicles and infrastructure. However, more opportunities are likely to arise as vehicles are replaced with newer models that enable different material streams to be collected on a single pass.

**d. Technically capable of being recycled**

As the extent of recycling has increased, new markets for recyclate have opened up. This trend is expected to continue. This in turn will

make it practicable for relevant establishments and undertakings in more areas to recycle a wider variety of materials, for example such as plastic pots, tubs, trays and film.

## **Consultation Questions**

Q1 - Do you consider the statutory guidance sets out clearly how the Welsh Government considers establishments and undertakings that collect, transport or receive waste paper, metal, plastic and glass should comply with the legal requirements laid down in Regulations 13 and 14 of the Waste (England and Wales) Regulations 2011, as amended by the Waste (England and Wales) (Amendment) Regulations 2012. If you have answered no, please provide a brief explanation of what you feel is not clear or should be changed in the statutory guidance, and, where relevant, the legal basis under which you consider the change(s) should be made.

Q2 - We have asked one specific question. If you have any related issues which we have not specifically addressed, please use this space to report them.

## Consultation Response Form

### Consultation Response Form

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: