

Consultation on amending the Waste Regulations 2011 on the separate collection of recycling

Summary of responses

Date: 19 July 2012



Llywodraeth Cymru
Welsh Government

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www.defra.gov.uk/consult.

<http://www.defra.gov.uk/environment/waste/>

<http://wales.gov.uk/consultations/environmentandcountryside/wastereg13/?lang=en>

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A copy of the responses to the consultation received in Wales will be placed in the Publication Centre, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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Introduction

This document contains the Summary of Responses, and Government response, to the consultation on amendments to the Waste (England and Wales) Regulations 2011 on separate collection, which was published by Defra and the Welsh Government in February 2012.

Parts 1 and 2 of this document set out the summary of consultation responses received by Defra and the Welsh Government respectively.

The Summary of Responses for both England and Wales detail the numbers of consultation responses received, and the types of organisations who responded, both by sector and individually by name. They also set out whether or not respondents agreed with the amendments proposed in the consultation, and discuss the main issues raised and points made.

Part 3 contains the Government response, jointly on behalf of the Department for Environment, Food and Rural Affairs and the Welsh Government.

Defra and the Welsh Government would like to thank everyone who contributed to our consultation.

Part 1: Summary of Consultation Responses in England

1. Defra and the Welsh Government consulted on amendments to the Waste (England and Wales) Regulations 2011 (the Regulations). We accepted that we needed to amend these Regulations as a result of a Judicial Review on the transposition of the requirements of the revised Waste Framework Directive 2008/98/EC ('the Directive') on the separate collection of paper, glass, metal and plastic recycling by 2015. Defra and the Welsh Government acknowledged that, as drafted, the Regulations did not accurately reflect these requirements. The court granted a six-month stay of the Judicial Review proceedings until 13 June 2012 to amend the Regulations.
2. We consulted on one question:

Question: Do you agree that the amendments proposed to the Regulations adequately transpose the requirements of the revised Waste Framework Directive? If not, please identify the specific requirement of the rWFD and give reasons to support your view that it is not adequately transposed in the proposed amendments.

Overview of responses

3. At the risk of oversimplifying the range of responses, they broadly fell into three camps. One group of respondents agreed with our proposed amendments. Of these respondents, most who made further comments did so on legal drafting and/or wider issues. Another group of respondents disagreed with our proposed amendments, and most of these respondents also made further comments, on legal issues, and/or wider issues. A third group did not clearly specify agreement or disagreement with our proposed amendments, or said that it was not currently possible to express agreement or disagreement, but made comments to be taken into account.
4. In general, the majority of responses from local authorities, waste management companies and their representative bodies supported our proposed amendments. One of the wider issues of most concern was the need for further guidance, to define what is "technically, environmentally and economically practicable" (TEEP), and "quality standards", to provide greater clarity. In particular they were concerned about the prospect of further legal challenge to those organisations covered by this obligation without this clarity. Other areas that drew particular comment were how best to achieve high recycling rates, protect local decision making, take account of local authority budgets, and safeguarding the value of investment in infrastructure such as MRFs.
5. In general, recycling reprocessing companies, their representatives and campaign groups disagreed with our proposed amendments. Detailed comments were made on points of legal drafting. Wider issues of concern for reprocessors related particularly to ensuring that recyclates of high quality were produced. A few local authorities also expressed disagreement, for different reasons. These local authorities considered that the proposed amendments were not sufficient to protect local authority decision making, and in particular the option to use a co-mingled collection.
6. The group that did not clearly specify agreement or disagreement with our proposed amendment comprised local authorities, business associations, consultancies, and

private individuals. Wider concerns focused on quality standards, guidance – some thought that in the absence of guidance it was not possible to express agreement or disagreement - and how best to achieve high recycling rates.

Breakdown of responses

7. Defra received 69 responses. These included responses from umbrella organisations, and duplicate responses from organisations who had submitted the same response individually. Where membership is clear, such as a body representing a specified number of named organisations, we have counted the response according to the total number of organisations represented. Where an organisation is a membership body but it is not clear how many members it represents or if all members have agreed the response, we have counted it as one response. Where an organisation has submitted the same response as part of a group and also individually, we have counted it once. As a result numerical data on the summary of responses is based on responses from 122 organisations. For a full list of respondents, see Annex A.
8. 81 organisations agreed that our proposed amendments adequately transpose the Directive, 20 disagreed, and 21 did not specify agreement or disagreement.
9. The breakdown of responses from sectors was as follows:

Sector	Organisation Type	Responses Received
Business Associations		3
Campaign Groups		2
Local Government	Local Authorities	38
	Waste Partnerships	
Waste and Resource Industry	Recycling Reprocessors	19
	Representative Body	
	Waste Management	
Other	Consultancy	7
	Legal	
	Private individual	
	Social Enterprise	

10. Comments fell into the following broad categories, which are discussed in more detail below:
 - Wording of legislative amendment
 - Guidance and MRF Code of Practice
 - Quality Standards
 - Impact on Quantity on Recycling
 - Health and Safety
 - Localism
 - Finance and investment

Wording of legislative amendment

11. Seven of those who agreed with our proposals made legal points, along with 18 of those who did not agree with our proposals, and 7 of those who did not specify

agreement or disagreement.

12. From those who agreed, points made included emphasising that separate collection of dry recyclables was not an absolute requirement of the Directive but was subject to the tests of 'TEEP' and meeting 'quality standards'. Therefore, the key issue was the facilitation of recycling, including at least paper, cans, plastics and glass to achieve a particular outcome, not the mandating of a specific system, or a debate on kerbside-sort versus co-mingled collection.
13. The view was also expressed that co-mingled collection is a form of separate collection. In particular, that co-mingled collection of mixed dry recyclables is a means of separate collection where a waste stream is kept separately from residual waste, to facilitate a specific treatment, which is (i) sorting recyclables into fractions and (ii) final treatment to achieve recycling. This view was shared by some of those who did not specify agreement or disagreement with our proposed amendments, who also thought that the provision of co-mingled collections must be preserved and protected within law.
14. Alternative wording to the draft revised Regulation was also proposed, to reflect the distinction between waste collection authorities and other waste collectors, rather than between waste collection authorities in their different capacities of contracting for the collecting of waste and actually collecting it. This revision would also mean that the enforcement authority – the Environment Agency - would only be able to act in relation to non-local authority establishments or undertakings. This wording was suggested as being more in line with the intention of Regulation 13, and establishing the decisions of local authorities as subject only to recourse in public law.
15. 2 respondents - 1 who agreed with our proposals, and 1 who did not specify agreement or disagreement – also raised the issue of enforcement, and thought it appropriate for the Environment Agency to be the enforcement body.
16. Clarification was sought on 2 other points of law: how existing Waste Disposal Authority powers of direction relate to separate collection requirements on Waste Collection Authorities in 13(3) of the proposed amendment; and on the status of the Household Waste Recycling Act 2003, which extends the duty of collection to include separation of at least two recyclable materials. 1 of those who did not specify agreement or disagreement with our proposed amendments thought that the Household Waste Recycling Act 2003 sat comfortably and effectively alongside other EU legislation.
17. From those who disagreed with our proposals, nearly half of those who made legal points questioned what they considered to be the switching of the terms “necessary” and “appropriate” from what appears in Article 11(1) of the Directive. The reasons for making the switch were considered to be unclear and the commitment to quality was considered to be weakened. The wording proposed in the consultation was considered to reverse the requirement in the Directive for high quality to result from separate collections, to imply instead that separate collections should only be set up where they are required to meet quality standards. It was considered not helpful that those standards were then not described.
18. From those who disagreed with our proposals, one view expressed was that separate collection of four types of waste was required by the Directive by 2015, and the only

matter of discussion was whether or not separate collection is 'TEEP' by that date. In relation to this last point, it was asserted that separate collection is 'TEEP' everywhere in the UK and therefore separate collection should be required by 2015. An additional point was that consideration of whether separate collection is 'TEEP' should be made at a Member State level for the whole of the territory rather than be judged at a more local level.

19. On the other hand, some thought that the amendment did not go far enough towards making it clear that co-mingled collection is acceptable, and that regulation should include a specific statement confirming, for the avoidance of doubt, that co-mingled collection systems are permissible as a method of separate collection where they can be shown to be 'TEEP'. The removal of the reference to the acceptance of other collection systems was considered to effectively endorse separate collections on the presumption that it promoted better quality recycle.
20. Support was expressed for the policy adopted by the Scottish Government whereby co-mingling is a "form of derogation" and has a role "only if material quality remains as it would be if items were collected separately by individual waste type". Scrutiny would be needed in order to achieve quality standards, from the initial acceptance of site licenses and associated working plans, the requirements of the MRF Code of Practice and compliance with Trans-Frontier Shipment requirements, in order to enforce acceptance of co-mingling where it meets the test of achieving high quality recycling similar to that achieved with separate collection.

Other legal points

21. From those who did not specify agreement or disagreement, there was concern that the risk of legal challenge would simply be transferred from central to local government and their contracted service providers. Some pointed out that compliance with separate collection could be met by types of collection other than from the kerbside, i.e. bring banks.

Guidance and MRF Code of Practice

22. Views were expressed on guidance by 18 of those responses who agreed with our proposed amendments, 5 who disagreed, and 10 who did not specify agreement or disagreement. Guidance was one of the areas that drew the most comments.
23. Across the range of respondents was the view that guidance should give definitive meanings to the interpretation of the tests on 'TEEP' and 'quality standards', as well as clarifying responsibility for assessment and compliance. This was considered crucial to reducing ongoing uncertainty, and the risk of further legal disputes, as well as protecting local decision making about the choice of collection systems. Some thought that guidance should specifically recognise the benefits of co-mingling; and seek to protect investment in local authority waste management systems.
24. 11 of those who agreed with our amendments supported the development of the MRF Code of Practice, with involvement in its development from waste collection and disposal authorities. There was some concern that the MRF Code of Practice should not result in increased gate fees for local authorities; and on where responsibility for regulating compliance with the MRF Code of Practice would lie.

Quality standards

25. Four of those who agreed with our proposed amendments thought that industry specifications on quality could be met through adequate separation at high quality MRFs.
26. 14 of those who disagreed with our proposed amendments made points on quality standards. Most thought that the relevant quality standards were those required for reprocessing in the EU, or those set by buyers and the reprocessing industry. There was some opposition to the export of mixed materials to Asia, where costs for sorting and disposal of non-target material are lower, as falling outside the intended purpose of the Directive. The view was also expressed that down-cycling was not permitted and should be addressed by quality standards.
27. Some issues were raised on particular types of waste streams, and it was thought that contamination problems for reprocessors were compounded by weight-based targets, and focus on throughput over quality.
28. Six of those who did not specify agreement or disagreement with our proposed amendments made points about quality standards. These included that industry standards could be met through adequate separation at high quality MRFs, that the relevant quality standards should be set by buyers or EU reprocessors, and that downcycling was not permitted. A contrasting concern was that relying on quality standards set by reprocessors could result in arbitrarily set standards that could not be met by co-mingled collections.

Impact on Quantity of Recycling

29. 15 responses from those agreed with our proposals, 1 from those who disagreed, and 5 from those which did not specify agreement or disagreement, made points on the quantity of recycling.
30. These included concern that the prevention of co-mingled collection would significantly reduce recycling rates and adversely impact the UK's achievement of the Directive's target to recycle 50% of waste from households by 2020. Co-mingled collection was considered to allow the expansion of the range of materials collected at kerbside, within existing infrastructures of vehicles and storage, prior to transfer to the sorting facility. Co-mingled collection was also highlighted as particularly important for promoting recycling in areas where there is limited space or where it is particularly suited to the householder/customer. These points were supported by views that collection services should be straightforward and easy to use in order to achieve high recycling rates, and that changing to separate collection would most likely lead to reduced recycling rates, and increased landfill.
31. A range of other suggestions were made on the topic of recycling. For example it was suggested that greater consistency of instructions to householders, with a designated dry recyclables bin colour across the UK, should be adopted, as new and existing schemes replace receptacles. In addition adequate storage for separated recycling should be built into the planning system where possible to make it easier for small firms to store recyclates ahead of collection.

Health and safety

32. 4 responses made points on health and safety. These explained that co-mingled collection of recycling has reduced risks associated with manual handling compared to kerbside sorting; and that the Health and Safety Executive has long lobbied local authorities to move to co-mingled wheeled bin systems to reduce the risk of musculoskeletal injury to waste operators and front line staff.

Localism

33. 18 respondents from those who agreed with our proposals, 1 who did not, and 2 who did not specify, made points on localism. There was a strong view that choices on delivery of waste services and collection methodologies, and value for money, are a local matter for local authorities and their communities to decide to suit local circumstances. Local authorities should be allowed to make these choices, and to make decisions on what is 'TEEP', without the prospect of appeals, prosecutions or challenges; and flexibility should be allowed provided appropriate quality standards are met. The view was also expressed that the amendments should allow local authorities **more** flexibility to act on a local basis.
34. Related to this was a view that while local decisions reflecting local circumstances are right, these clearly need to be set within the national and European framework to maintain quality standards for reprocessors and support wider goals of carbon efficiency, a level playing field for green jobs, and best value for taxpayers.
35. Arguments were made for flexibility for local authorities to choose collection methodology to suit local geography. Separate presentation of recyclables by local residents was considered not practicable in areas of limited space for waste storage, and kerbside sort was considered not practicable in areas of narrow, congested streets and high density buildings in multiple occupancy. Equally, the impact of operating a slower, segregated material collection regime would be worsened in rural areas with wide dispersal of residents, and additional travel was considered to have significant financial and environmental implications.

Finance and investment

36. 10 respondents who agreed with our proposals, 3 who did not, and 2 who did not specify, made points on the economic implications of collection methodologies. The majority who commented on this point were concerned at the economic consequences of any requirement for separate collection, as they considered separate collection a more expensive system to operate. These respondents thought that separate collection would require more complex and expensive vehicles, and a greater number of vehicles and crew, whilst, at the same time, making collection itself slower, increasing traffic congestion, and requiring more containers for storage and usage. They also thought that more complex collection vehicles were more expensive and less easy to replace in case of breakdown or accident, and that overall the payload per vehicle was lower.
37. A contrasting view was put forward that kerbside sort represents the best value for money, environmental value, and green jobs potential.
38. The point was made that the introduction of new systems of separate collection would require substantial initial investment and was not feasible in the current economic

climate and with reduced funding for local authorities. Furthermore, any changes to requirements on collection methodologies could invalidate current investment in co-mingled collection systems and MRFs, and existing contracts.

39. On funding and costs, views were expressed that a reversion to separate collections should be treated as a new burden on local authorities and therefore be fully funded by Government. Similarly, of concern to small businesses was that redrafting of the Regulations must not result in higher costs. Small businesses were considered to have difficulty in accessing suitable waste and recycling services - and were therefore hindered in trying to contribute to the waste hierarchy adequately and to maximise resource efficiency - due to economies of scale.

Part 2: Summary of Consultation Responses in Wales

1. The Welsh Government and Defra consulted on amendments to the Waste (England and Wales) Regulations 2011¹ (the Regulations). We accepted that we needed to amend these Regulations as a result of a Judicial Review on the transposition of the requirements of the revised Waste Framework Directive 2008/98/EC ('the Directive') on the separate collection of paper, glass, metal and plastic recycling by 2015. The Welsh Government and Defra acknowledged that, as drafted, the Regulations did not accurately reflect these requirements. The court granted a six-month stay of the Judicial Review proceedings until 13 June 2012 to amend the Regulations.
2. Only one question was consulted on:

Question: Do you agree that the amendments proposed to the Regulations adequately transpose the requirements of the rWFD? If not, please identify the specific requirement of the rWFD and give reasons to support your view that it is not adequately transposed in the proposed amendments.

Overview of responses

3. The Welsh Government received 21 replies to the consultation², including responses from waste partnerships representing groups of local authorities.
4. Broadly speaking, responses fell into three categories, those who agreed with our proposed amendments, those who disagreed with our proposals and a third group that did not clearly state agreement or disagreement with our proposed amendment.
5. The common request from both those who agreed and those who disagreed with the proposed amendment is that all interested parties must be involved in developing the statutory guidance on quality standards.
6. 15 respondents agreed with our proposed amendments. These included 9 local authorities and 2 local authority organisations - the Wales Local Government Association (WLGA) and the Local Authority Recycling Advisory Committee (LARAC), together with Cwm Taf Local Health Board, the Federation of Small Businesses, the Institute of Civil Engineers (ICE) Wales and Public Health Wales. One issue raised in the responses included the need for the Material Recovery Facility (MRF) Code of Practice and guidance to define what is "technically, environmentally and economically practicable (TEEP) along with the necessary quality standards for recyclates, to provide protection for local authorities from legal action and challenge on their chosen collection methods. Other comments were that they were reassured that the amendment does not alter the underlying position that the Regulations should not mandate a particular form of recycling collection, that they protect local flexibility, that

¹ http://wales.gov.uk/topics/environmentcountryside/epq/waste_recycling/legislation/rwfd/?lang=en

² <http://wales.gov.uk/consultations/environmentandcountryside/wastereg13/?lang=en>

local authorities operate against a background of financial constraint, that local infrastructure and circumstances influence collection systems, and that small businesses should not face significant cost increases as a result of the legislation.

7. Five respondents disagreed with our proposed amendments. They were the Campaign for Real Recycling, the Commissioner for Sustainable Future in Wales, Cwm Harry Land Trust Ltd, the Resource Association and UK Recyclate. They raised comments on the legal drafting and a number of concerns including; the need to achieve high quality recyclate for the relevant recycling sector, that there must be comprehensive agreement with all stakeholders on quality standards, that this must be placed on a statutory footing and regulated effectively and transparently to ensure that those who manage the processing of co-mingled material through MRFs are able to work in tandem and with the confidence of reprocessors. Several respondents stated that separate recycling collection at the kerbside is TEEP anywhere in the UK and that almost half of all UK local authorities, covering all demographic types, are already carrying out separate collections, much like those required by 2015.
8. One respondent did not clearly state agreement or disagreement with our proposed amendment. Cylch stated that switching the terms 'necessary' and 'appropriate' needed clarifying. However, their other comments focused around the importance of the quality of materials for material buyers, which is a concern shared by those who disagreed with our proposals as outlined above.

Breakdown of responses

9. The Welsh Government received 21 replies to the consultation³, including responses from waste partnerships representing groups of local authorities. Wherever possible these joint responses have been recorded against the individual local authorities represented. Also, where a local authority has responded as an individual authority and part of a representative group, we have counted the response once to avoid duplication.
10. Umbrella groups have not been broken down into separate responses.
11. 15 of the respondents agreed, 5 disagreed and 1 sought clarification on why the terms 'necessary' and 'appropriate' were switched.
12. A full list of the respondents is in the attached **Annex B**.
13. The breakdown of response types and the sectors represented is shown in the table below:

³ <http://wales.gov.uk/consultations/environmentandcountryside/wastereg13/?lang=en>

Sector	Organisation Type	Responses Received
Campaign		1
Community	Social Enterprise	3
Civil Engineering	Umbrella Group	1
Health	Local Health Board	1
	Public Health Adviser	1
Local Government	Local Authority	9
	Umbrella Group	2
Small Business	Umbrella Group	1
Reprocessors	Umbrella Group	1
Other		1
Total		21

14. Comments fell into the following broad categories, which are discussed in more detail below:

- Wording of legislative amendment
- Quality Standards
- Guidance and MRF Code of Practice
- Impact on Quantity of Recycling
- Localism

Wording of legislative amendment

15. Of the 15 responses that agreed with our proposals, 10 commented on the law in this area, together with the 5 who did not agree with our proposals and the 1 that sought clarification regarding the proposed amendments.

View of those who agreed with our proposals

16. The majority of the Local Government sector was reassured that the amendment does not alter the underlying position that the Regulations should not mandate a particular form of recycling collection.

17. The WLGA stated that it is important that local authorities have the flexibility to adapt their systems. They expressed the view that, in meeting the requirements of the Directive/Regulations, they will also be able to adjust their systems in light of experience to ensure they work operationally.
18. One respondent agreed that the aims of the Directive were not to promote one particular method of collection but just to express a preference for separate collections as the means most likely to achieve the purpose of the Directive. They added that this preference for separate collection does not mean that comingled collections are not permissible as long as this method can also achieve high recovery rates. Also, that the key determinant therefore should be the outcome – high quality recycle not the way in which it is collected.
19. Another respondent stated that they broadly agree with the proposed amended wording, subject to the Welsh Government's interpretation of the amended Regulations and understanding that separate collections will be undertaken only where they are necessary to meet the appropriate quality standards for the relevant recycling sectors and are TEEP.
20. Three local authorities stated that the Regulations or the guidance that follow should not adversely complicate this process and make TEEP claims subject to potential challenge.
21. The Federation of Small Businesses stated that it is essential to bear in mind, when considering waste legislation and regulation, the context that small businesses have to operate in when managing their waste and recycling. Also, whilst they fully support the requirement for all waste management companies to offer separate collection of waste by 2015 they are concerned that, given the difficulties small businesses have in accessing suitable waste and recycling services, this could mean many of their members facing significant cost increases.

View of those who disagreed with our proposals and one who questioned the proposed amendment

22. UK Recyclate stated that the draft Regulations, if enacted, would be legally deficient and subject to challenge. They commented that the approach to looking at the position at a local rather than at Member State level is wrong, as the Directive requires the Member State to set up separate collection. A legal argument was also provided as to why the draft Regulations are deficient, relating to the separate obligations of the second and third paragraphs of Article 11.
23. Three respondents stated that the switching of the terms “necessary” and “appropriate” did not adequately transpose the Directive.
24. One respondent stated that it was not clear in the consultation why the two terms had been switched, and that there was a need for clarity on this point. This was agreed by another, who stated that the switch of wording only adds to uncertainty and confusion in the recycling supply chain, and has the effect of diminishing the critical importance of quality standards.
25. One respondent stated that the reading of Articles 10 and 11 means that it must first be shown that separate collections are not TEEP: only then is an element of

comingling permitted. Another respondent supported this by stating that the Regulation should be drafted so that a fully separated collection duty is the norm and that any exception to this is only acceptable where a clear, robust evidence base proves this to be necessary and sustainable.

26. One respondent stated that any exception to separate collections as called for in the Directive on the grounds of it being non-TEEP will need to be justified by the authority or the collector. It will be open to challenge on the basis of comparison with practice and experience elsewhere and known models of approach.
27. Four respondents stated that separate recycling collection at the kerbside is TEEP anywhere in the UK.
28. One respondent stated that almost half of all UK local authorities, covering all demographic types, are already carrying out separate collections, much like those required by 2015.
29. One respondent suggested that consideration should be given to reverting to the exact wording of the Directive but also review the approach taken by the Scottish Government where co-mingled collection is regarded as a 'form of derogation' and consider the approach to quality set in the Waste (Scotland) Regulations 2012 whereby co-mingled collection has a role, only if material quality remains as would be if items were collected separately by individual waste type.

Quality Standards

30. 11 of those who agreed with our proposals made comments about quality standards, along with 2 who did not agree with our proposals and 1 that sought clarification regarding the proposed amendments.

View of those who agreed with our proposals

31. The majority of the Local Government sector requested that local authorities are closely involved in developing the statutory guidance on what is meant by TEEP and the appropriate quality standards for the relevant recycling sectors.
32. The WLGA stated that room for disagreement clearly remains in relation to what is considered 'practicable'. The same applies in relation to what are considered 'appropriate quality standards'. For example, should the quality bar be set at a level reflecting the type of material recycling companies would ideally like to receive or at a level where reprocessors are willing to pay for material? The WLGA believes that, depending on the system being operated, the latter reflects the market conditions that local authorities are faced with and have to respond to, against a background of financial constraint. There is also an issue of the spatial extent over which local authorities will be able to apply the 'practicability' derogation: can it be applied across the whole of a local authority's geographic area or will it have to be argued on a case-by-case basis for more localised areas where specific conditions apply (e.g. particular housing tenure or local geographic constraints)?

33. One of the respondents from the Health Sector is seeking clarification as to whether the responsibilities of any “establishment” and “undertaking” in relation to Regulation 13(2) apply to commercial waste collection companies contracted to provide waste management services to other commercial or public sector organisations other than local authorities. They state that it is difficult to see how Local Health Boards could conceivably source segregate the four waste streams set out in Regulation 13 at hospitals clinics and health centres.
34. The Federation of Small Businesses stated that whilst they understand that there may be legal grounds for removing paragraph 13(2) from the redrafted regulations, they believe that it is essential that the associated guidance clearly states that comingled collection is a form of separate collection. They believe this is crucial to ensure waste collection authorities do not misinterpret the redrafted regulations and pass on any additional costs to their small business customers.
35. The Institution of Civil Engineers Wales supports our proposals but feels that there should be a qualification where a time limit is imposed so such that comingled collections are phased out in time.

View of those who disagreed with our proposals and one who questioned the proposed amendment

36. One respondent stated that there must be comprehensive agreement with all stakeholders on quality standards, placed on a statutory footing and regulated effectively and transparently to ensure that those who manage the processing of comingled material through MRFs are able to work in tandem and with the confidence of reprocessors.
37. Another respondent stated that any decision on the quality of material and the relevant standards must be determined by the material buyers and not set by waste management industry/or the producers of the recyclate.
38. The Resource Association stated that they are not opposed to comingled collection of materials; their concern is to promote the usability of secondary resources as the primary issue of concern, rather than the merits of one collection method over another.
39. One respondent stated that the mandatory quality standards that are set must be policed by the Environment Agency as the regulatory body in the UK.
40. One respondent stated that in their view, an existing contractual arrangement is not a sufficient reason for a local authority to consider a move to separated collections to be economically impractical. It makes TEEP into a ‘slippery’ commodity with the potential to render the collection obligations under the Directive meaningless.

Guidance and Materials Recovery Facility (MRF) Code of Practice

41. Two of those who agreed with our proposals made comments about guidance and the MRF Code of Practice, along with 3 who did not agree with our proposals and 1 that sought clarification regarding the proposed amendments.

Views of those who agreed with our proposals

42. LARAC stated that they would welcome a mandatory MRF Code of Practice, which should include reference to reporting of end destination of materials.
43. One local authority stated that there are questions that need clarity regarding the quality of recyclate including whether MRFs will be scrutinised on their reject rates and will this be included in an assessment of quality material.

Views of those who disagreed with our proposals and one who questioned the proposed amendment

44. One respondent stated that the “quality standards” referred to in the proposed 13(4)(b) are not explained in full in the consultation. However, Annex B indicates that an important part of these will be the proposed MRF Code of Practice. Adopting this as the quality standard will encourage maintaining the status quo of co-mingled collection and export of large quantities of recyclates outside of the EU. This is not compatible with reaching a zero waste society.
45. One respondent stated that MRF is an expensive and totally unnecessary stage in a simple process where, if the sorting is carried out at the earliest point in the process, high quality is achieved without fail at much lower cost.
46. Two respondents stated that the necessary standards cannot be the standards of mixed materials being sent to Asia, where much UK collected material goes (55% of paper and 75% of plastic), as there is no set standard. Excepting the Chinese quality market for paper, the appropriate standard for Asian export can mean just about anything. That is not what we want and it simply is not clear enough to serve as a legally-binding regulation. They also state that the UK exports more material to Asia than the rest of the EU combined. One of the respondents argues that this is in large due to the amount of comingling in UK collections and the resultant contamination, making materials unfit for EU reprocessing.

Impact on Quantity of Recycling

47. Two of those who agreed with our proposals made points about the impact on the quantity of recycling, along with 1 of those who did not agree with our proposals.

View of those who agreed with our proposals

48. The WLGA stated that high levels of participation in collection systems are vital if high recycling targets in Wales are to be achieved. This will depend in part on having systems that residents feel comfortable using. The WLGA also stated that poor participation in an unpopular collection system could contribute to a system being considered not economically practicable.
49. The Federation of Small Businesses stated that there is not the infrastructure in place for all small businesses to be able to conform to the waste hierarchy adequately and maximise resource efficiency – which means that SMEs cannot fully play their part in the move to the zero waste economy.

View of those who disagreed with our proposals

50. UK Recyclate reported that the claimants⁴ who brought the judicial review commissioned additional (independent) research into the current UK situation. A report was produced regarding the collection practice of local authorities in the UK. That the last finding of the report bears out a previous WRAP finding that the collection type is not a significant factor in terms of householder satisfaction with the service. That any claims that the simplicity of throwing all recyclables in one bin appeals more to the householder, or that kerbside sort seems too much trouble are without basis.

Localism

51. Nine of the local authorities who agreed with our proposals made points about localism.
52. Two local authorities stated that local authorities have to meet statutory targets and have to make decisions in the absence of clear guidance, on the basis of local circumstances. They welcome the proposed amended wording, which provides confirmation that the Welsh Government intends to continue to allow local authorities discretion as to the collection system that they adopt.
53. One local authority stated that local authorities are best placed to determine the most appropriate waste and recycling collection system to use in their local area as this is strongly influenced by local infrastructure and circumstances.
54. One local authority stated that achievement of meeting the statutory recycling targets will be dependent upon public support and participation and local authorities need to consider the views of their residents in designing and implementing collection services. They commented that the Regulations should not make it difficult for local authorities to undertake this primary function, specifically as it is the local authority themselves that will face fines for non-achievement.
55. Five local authorities stated that the authorities within the region recognise the need to ensure that the recyclate they produce is of a quality suitable to meet the appropriate quality standards of the relevant recycling sectors but wish to stress the importance of each authority continuing to be able to determine the most appropriate collection methods to meet their local needs.

⁴ Ardagh Glass, DS Smith Paper Ltd, Novelis, Palm Recycling Ltd, Plastics Sorting Ltd, Smurfit Kappa Ltd and UK Recyclate.

Part 3: Defra and Welsh Government Response to the Consultation

1. Defra and the Welsh Government sought, through our proposed amendment that was the subject of the consultation, to ensure we accurately transposed the requirement contained in the third paragraph of Article 11(1) of the revised Waste Framework Directive. We acknowledged that the existing Regulation 13(2) needed to be amended as co-mingled collection of recycling with subsequent separation is not the same as separate collection. The requirement in the Directive is to set up separate collections of at least paper, glass, metal and plastic by 2015, subject to qualification by Article 10(2).
2. Our proposed amendment took as its starting point that, from 1st January 2015, establishments and undertakings which collect waste paper, metal, plastic or glass must do so by way of separate collection. This reflects the basic requirement of the Directive. The proposed amendment then went on to set out the circumstances where this duty applies, reflecting the qualifications in Article 10(2) of the Directive. Our intention was to reflect these qualifications accurately and meaningfully.
3. In simple terms these qualifications are practicality and necessity. Our amendment sought to transpose these requirements by saying, firstly, that if it is not practicable to set up separate collections, then separate collection is not required. Secondly, that if the intended outcome – the necessary quality of recycling - can be achieved through means other than separate collection then separate collection is not required.
4. Since the consultation closed in April, we have carefully considered the responses received. There was clearly a degree of both uncertainty and disagreement expressed by respondents about the wording of our amendment. In particular the approach taken to drafting the qualification on necessity in Regulation 13(4)(b).
5. The qualification on necessity is based upon the language in Article 10(2) “*where necessary.....to facilitate or improve recovery*”. If separate collection is not necessary to achieve this aim then it is not required. However, we attempted to give greater clarity to the meaning of this term by relating this to the concept of quality standards for the relevant recycling sectors. This concept is taken from paragraph 2 of Article 11(1) of the Directive, on the general obligation to promote high quality recycling through separate collection.
6. The consultation responses received clearly demonstrated uncertainty about the effect of our proposed language, and disagreement with the accuracy of the transposition, with this particular aspect of the proposal. This was sufficient to persuade us that this aspect of the amendment as drafted would not provide the necessary legal and practical clarity intended. As a result, we have decided not to retain the wording we consulted upon in Regulation 13(4)(b).
7. We have looked again at this particular sub-clause in our proposals. Our intention remains to accurately reflect the qualifications contained in Article 10(2) of the Directive. However, our attempts to provide greater clarity on the meaning of these qualifications has resulted in challenge, and not achieved the intended outcome of assisting those subject to the obligation, and others, to understand what is required of

them. As such we have decided not to pursue this more interpretative approach to transposition. Instead we will revert more closely to the language of the Directive.

8. As a result we have decided instead to introduce an amendment that reads as follows:

“Duties in relation to collection of waste

13.—(1) This regulation applies from 1st January 2015.

(2) Subject to paragraph (4), an establishment or undertaking which collects waste paper, metal, plastic or glass must do so by way of separate collection.

(3) Subject to paragraph (4), every waste collection authority must, when making arrangements for the collection of waste paper, metal, plastic or glass, ensure that those arrangements are by way of separate collection.

(4) The duties in this regulation apply where separate collection—

(a) is necessary to ensure that waste undergoes recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive and to facilitate or improve recovery; and

(b) is technically, environmentally and economically practicable.”.

9. In addition this requires a consequential amendment to Regulation 14 on the prohibition on not mixing waste that has been separately collected with other waste to ensure consistency in the manner in which the same qualification is expressed in the two Regulations. The following is proposed:

In regulation 14, for paragraph (2) substitute—

“(2) This duty applies where keeping waste separate is necessary to ensure that waste undergoes recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive and to facilitate or improve recovery.”.

10. In sticking more closely to the wording of the Directive we believe that we have accurately transposed the requirement of the Directive into domestic law. We recognise that a number of consultation responses raised concerns about ongoing legal challenge, or the risk of legal challenge being passed on to those bodies conducting collection of waste paper, metal, plastic and glass after 2015. As set out in the consultation it is both Defra’s and the Welsh Government’s intention to provide guidance on these issues, developed with stakeholders, to minimise the prospect of ongoing disagreement.

11. One response made the point that the only qualification to the obligation for separate collection in Article 10(2) was whether it is technically, environmentally and economically practicable. We do not accept this view, as is clear from the amendments we are making. Our position remains that the Directive imposes a requirement for separate collection, subject to two qualifications (in summary, as set out above from paragraph 3 onwards, of both necessity and practicality).

12. One response made the point that TEEP should only be considered at Member State level. We do not accept this view. The Directive states ‘where waste is collected separately’, it does not say where ‘Member States’ separately collect waste. Whether something is TEEP may well depend on what the position is at the local level.

13. Enforcement, and in particular the role of the Environment Agency, was raised by a small number of responses. This included a proposal to amend the Regulations to alter the scope of the Agency's enforcement role. We have not considered this proposal as part of the exercise to amend the Regulations, not least as it was not an explicit part of the consultation. We anticipate that enforcement, and the role of the Agency, may need to be addressed as part of the work to develop guidance to accompany the Regulations.

Guidance

14. Of key importance to accompany the legislation will be guidance, to cover a range of key issues which remain of concern to people who responded to the consultation, but which it is not possible to address in the Regulation.
15. We anticipate that the range of issues that the guidance will need to cover to assist in interpretation of the Regulations will include; clarification on the meaning of the key concepts such as 'separate collection' and the qualifications on 'practicality' and 'necessity'; responsibility for making decisions about collection arrangements; valid criteria to consider in that decision making process; expected evidence to support those decisions; and enforcement of those decisions.
16. The European Commission have now published⁵ their long awaited guidance on the revised Waste Framework Directive, including the specific obligation to introduce separate collection. In addition it addresses the possibility of co-mingled collection of recycling being acceptable to fulfil the requirement for separate collection. It also sets out the Commission's views on the interpretation of technically, environmentally and economically practicable. We anticipate using the Commission's guidance to form the basis for developing our guidance on our domestic Regulations.
17. A wide range of comments were made in response to the consultation on matters relevant to development of guidance to assist interpretation of the Regulations. These comments will be used to inform development of initial drafts for further discussion with stakeholders.
18. Some consultation responses directed us towards the approach being taken by the Scottish Government to this issue. We are in contact with counterparts in the Scottish Government and anticipate continuing to share our thinking as we develop guidance in our respective administrations.
19. In addition to this work directly linked to the Regulation on separate collections, related initiatives are being taken forward on the quality of recycling. Both Defra and the Welsh Government are developing initiatives to improve quality and the development of an MRF Code of Practice which will be subject to consultation in the coming months. This will provide important context for the development of guidance on separate collection by providing transparent information to local authorities, other undertakings and reprocessors to enable the supply chain to understand and improve the quality of recyclates.

⁵ <http://ec.europa.eu/environment/waste/framework/guidance.htm>

Next Steps

20. Amendments to the Waste (England and Wales) Regulations 2011 were laid in Parliament and the National Assembly for Wales⁶, as a Negative procedure Statutory Instrument on 19th July 2012. The amendments will come into force on 1st October 2012.
21. Our intention in laying the amendments to the Regulations immediately was to provide certainty about our intentions and the obligations on waste collectors. To allow Parliament, the National Assembly for Wales and others time to consider the amendments, particularly as this is over the summer period, we have set a coming into force date of 1st October. This is aligned with Parliament's Common Commencement Date. We think this is acceptable given the provisions the amendment is concerned with do not apply until 2015.
22. We intend to develop proposals for guidance with stakeholders over the coming months, leading up to a formal consultation

⁶ <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm>

Annex A - List of respondents to Defra

List of respondents

Organisation	Type
1. Alliance for Beverage Cartons & the Environment (ACE UK)	Industry
2. AmeyCespa(East) Ltd	Industry
3. Anaerobic Digestion & Biogas Association (The) (ADBA)	Industry
4. Ardagh Group, UK Glass Division	Industry
5. Association for Public Service Excellence	Other
6. Aylesford Newsprint	Industry
7. Bryson Recycling	Industry
8. Business Services Association (The)	Business Association
9. Cambridgeshire & Peterborough Waste Partnership (RECAP)	Local Government
10. Campaign for Real Recycling	Campaign
11. Canterbury City Council	Local Government
12. Chartered Institution of Wastes Management (The)	Industry
13. Chase Plastics Limited	Industry
14. Coggins, Professor Chris	Other
15. Community Resource Network	Other
16. Confederation of Paper Industries	Industry
17. Dartford Borough Council	Local Government
18. DS Smith Recycling	Industry
19. 4R Environmental Ltd	Other
20. Environmental Services Association	Industry
21. Eversheds	Other
22. Federation of Small Business	Business Association
23. Food & Drink Federation	Business Association
24. Friends of the Earth	Campaign
25. Gloucestershire County Council	Local Government
26. Gloucestershire Waste Partnership	Local Government
27. Gravesham Borough Council	Local Government
28. Greater Manchester Waste Disposal Authority	Local Government
29. Hampshire County Council	Local Government
30. Herefordshire & Worcestershire Strategic Waste Management Board	Local Government
31. Hull City Council	Local Government
32. Kent County Council	Local Government
33. Kirklees Council	Local Government
34. Leeds City Council	Local Government
35. Leicestershire County Council	Local Government
36. Leicestershire Waste Partnership	Local Government
37. Lincolnshire Waste Partnership	Local Government
38. Local Government Association	Local Government
39. London Borough of Camden	Local Government
40. London Borough of Hammersmith & Fulham	Local Government

41. London Borough of Lambeth	Local Government
42. Maidstone Borough Council	Local Government
43. Merseyside & Halton Waste Partnership	Local Government
44. Milton Keynes Council	Local Government
45. National Association of Waste Disposal Authorities (NAWDO)	Local Government
46. North London Waste Authority	Local Government
47. Novelis Recycling	Industry
48. Peninsula Recycling	Industry
49. Plymouth City Council	Local Government
50. Recoup	Industry
51. Regain Polymers Limited	Industry
52. Resource Association	Industry
53. Rushcliffe Borough Council	Local Government
54. Sandwell Metropolitan Borough Council	Local Government
55. Salford City Council	Local Government
56. Sevenoaks District Council	Local Government
57. Smurfit Kappa Recycling UK	Industry
58. Straight plc	Industry
59. Stivens, Sheryl	Other
60. Surrey Waste Partnership	Local Government
61. Swale Borough Council	Local Government
62. Thanet District Council	Local Government
63. UK Environmental Law Association	Other
64. UK Recyclate	Industry
65. Valpak	Other
66. Wakefield Council	Local Government
67. Wandsworth Council	Local Government
68. Waveney District Council & Suffolk Coastal District Council	Local Government
69. Western Riverside Waste Authority	Local Government
70. York & North Yorkshire Waste Partnership	Local Government

Annex B - List of respondents to Welsh Government⁷

Organisation	Type	Agree
Bridgend County Borough Council	Local Authority	Yes
Caerphilly County Borough Council	Local Authority	Yes
Campaign for Real Recycling	Campaign	No
Cardiff Council	Local Authority	Yes
Carmarthenshire County Council	Local Authority	Yes
Central Wales Waste Partnership (CWWP) (includes Ceredigion and Powys Local Authorities)	Local Authority x 2	Yes
Ceredigion County Council	Local Authority	Yes
City + County of Swansea	Local Authority	Yes
Commissioner for Sustainable Futures in Wales	Other	No
Cwm Harry Land Trust Ltd (Social enterprise working with waste materials)	Social Enterprise	No
Cwm Taf Local Health Board (LHB)	Local Health Board	Yes
Cylch (Representing the interests of the community recycling sector and social enterprises involved in preparation for re-use, recycling and composting of wastes)	Social Enterprise	Neither, but said that switching the terms 'necessary' and 'appropriate' need clarifying.

⁷ Bridgend, Carmarthenshire, Ceredigion and Swansea Councils made individual as well as part of a group response.

Federation of Small Businesses	Small Business – umbrella group	Yes
Institute of Civil Engineers Wales (ICE Cymru)	Civil Engineering - umbrella	Yes
Local Authority Recycling Advisory Committee (LARAC)	Local Government - umbrella	Yes
Public Health Wales	Public Health Adviser	Yes
Resource Association (Trade body for the reprocessing and recycling industries)	Reprocessor - umbrella group	No
South West Wales Regional Waste Management Committee (includes Neath Port Talbot, Bridgend, Carmarthenshire, Pembrokeshire + Swansea Councils)	Local Authority x 5	Yes
UK Recyclate (Social enterprise to trade recyclable materials)	Social Enterprise	No
Welsh Local Government Association (WLGA)	Local Government - umbrella group	Yes