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

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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;

“waste collection authorities” means for any county or county borough, the council of the county or county borough; and

“establishments and undertakings” include any organisation or sole trader (e.g. a business, company, partnership authority, society, trust, club or charity)¹.

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 assist in properly discharging their duties relating to the four waste materials.
2. This guidance covers regulations 13 and 14 of the 2011 Waste Regulations. These provisions transpose 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.

¹ The Welsh Government does not consider that the term applies to private individuals acting in a personal capacity.

6. Under Article 11(1) paragraph 2 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 waste².
7. Under Article 11(1) paragraph 3 of the Waste Framework Directive, by 2015 the UK is required to set up separate collection for at least the four waste materials subject to two tests being satisfied:
 - (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 to facilitate or improve recovery; and
 - (b) it is technically, environmentally and economically practicable.
8. In Wales these obligations are transposed through the system created by the 2011 Waste Regulations (namely regulations 13 to 14). From 1 January 2015 onwards, this system places duties on all establishments and undertakings that collect, transport and receive 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 waste streams that have been collected separately are not then mixed with other waste or other material with different properties³. This duty applies to all relevant establishments and undertakings that collect, transport or receive the four waste materials which have been separately collected⁴.
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. To assist establishments and undertakings in their waste management decisions, the Welsh Government has produced guidance on applying the hierarchy⁵.
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;
 - (b) without causing a nuisance through noise or odours; and
 - (c) without adversely affecting the countryside or places of special interest.

² 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.'

³ This is subject to the pre-requisite of being necessary to ensure waste undergoes recovery operations in accordance with Article 4 and 13 of the Waste Framework Directive and to facilitate and improve recovery.

⁴ Regulation 14(1) of the Waste (England and Wales) Regulations 2011.

⁵ http://wales.gov.uk/topics/environmentcountryside/epq/waste_recycling/publication/hierarchyguide/?lang=en

13. The waste management obligations (e.g. separate collection) are regulated 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)⁶.

Key Principles

14. The primary aim of the 2011 Waste Regulations, in line with the aim of the Waste Framework Directive (“the Directive”), is to deliver the best overall environmental outcomes and the protection of the environment and human health.

15. Prioritising recycling over disposal is also an aim of the 2011 Waste Regulations, as seen in the waste hierarchy and is the most likely means of achieving the higher objective of the best overall environmental outcome⁷.

16. Another principle is that of high quality recycling. Under the Directive, Member States have a duty to promote high quality recycling and to this end are to set up separate collections for waste where technically, environmentally and economically practicable (TEEP) and appropriate to meet the necessary quality standards of the relevant recycling sectors.

17. Where the four waste materials have been separately collected they 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 Directive, and
- (b) to facilitate or improve recovery.

18. 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.

19. The relevant establishment or undertaking should ensure that the four waste materials are collected separately from each other and from other sources of waste, where necessary to facilitate or improve recovery⁸ (e.g. the quality of recyclate) and where technically, environmentally and economically practicable (TEEP)

20. In order to facilitate and improve recovery, and to support the requirement of the Directive for the UK to promote high quality recycling, relevant establishments and undertakings should aim to not only increase the quantity but also the quality of the four waste materials. This is explained further on in this guidance.

⁶ Enforcement provisions are provided for in Part 10 of the 2011 Waste Regulations.

⁷ However, the Directive and likewise the 2011 Waste Regulations recognises that the best overall environmental outcome may not necessarily follow the priority order of the hierarchy and provides for departure from the waste hierarchy where it is necessary to achieve the best overall environmental outcome.

⁸ In addition to it being necessary to ensure that waste management is carried out in accordance with Article 4 and Article 13 of the Waste Framework Directive.

21. The requirement for separate collection does not mean that a separate bin is needed for each material. Separate collection can be carried out, 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 overall 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, provided that the quality produced would be similar to that resulting from 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 Natural Resources Wales, 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. Under regulations 38, 39 and 40 respectively of the 2011 Waste Regulations, Natural Resources Wales may issue a compliance notice, a stop notice or a restoration notice to an establishment or undertaking which collects waste paper, glass, plastic or metal

in contravention of regulation 13(2) of the 2011 Waste Regulations. Failure to comply with any of these notices may result in criminal proceedings being taken, and on summary conviction, can face a fine not exceeding the statutory maximum⁹ and on conviction on indictment, to a fine.

Detail

Carrying out the assessment

27. 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?

28. 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. Recycling is a specific case of recovery and so facilitating and improving recovery includes the aim of enhancing and making easier recycling (e.g. increasing the quality of the four waste materials).
29. Two or more of the waste streams may be collected using a co-mingled system if the system produces recyclate of a quality similar to that of separately collected waste which is intended to facilitate or improve recovery. The bench-mark should be that the recyclate is similar in both quality and quantity to that achieved with good separate collection. Examples of potential uses of recyclate from a good separate collection system are:
- 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.
30. Subject to available separation technology, the co-mingled collection of certain dry recyclates (e.g. metal and plastic) may be possible, if these materials can subsequently provide materials of the quality of those provided by separate collection - typically materials of a high standard. However, it is unlikely that the co-mingled collection of bio-waste and other ‘wet’ waste streams with dry streams such as paper will lead to high quality recycling. This has been

⁹ Note: Section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 removes the maximum fine for summary convictions. At the time of issue, this provision was not yet in force.

discussed and considered in the European Commission's guidance (paragraph 4.3.4, para 4)¹⁰. 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.

31. Co-mingled collection of glass together with paper or plastic may produce an acceptable standard of recyclate 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

as is achievable through separate collection.

32. 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 MRFs¹¹, which came into force in October 2014, with the first quarter's data expected to be available from spring 2015.
33. 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 assess whether the recyclate produced is of a quality that will facilitate or improve recovery.

Assessing what is "Practicable"?

34. 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.
35. In a recent case¹² 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

¹⁰ Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste: <http://ec.europa.eu/environment/waste/framework/guidance.htm>

¹¹ See new Schedule 9A to the Environmental Permitting (England and Wales) Regulations 2010

¹² '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.

36. 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 guidance¹³.

- ‘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.

37. The preference of waste producers (for example, householders or businesses) for different methods of waste collection will not be a relevant consideration unless it identifies technical, economic or environmental impracticabilities.

38. Relevant establishments and undertakings, including Waste Collection Authorities, may wish to consider the following (non-exhaustive) list of issues when assessing practicability:

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 pre-qualification 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 economic assessment of what is technically, environmentally and economically practicable.

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 own merits and separately from 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*"

¹³ Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste. At: <http://ec.europa.eu/environment/waste/framework/guidance.htm>

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 or environmentally 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 plastic such as pots, tubs, trays and film.