



# Amending the Waste Regulations 2011 on the separate collection of recycling

This briefing provides a summary of the consultation on amending the Waste Regulations 2011 on the separate collection of recycling. The changes proposed in the consultation apply in England and Wales.

## Key issues

- The Department for Environment, Food and Rural Affairs (Defra) and the Welsh Government are seeking views on amendments they are proposing to the Waste (England and Wales) Regulations 2011
- This relates to whether the proposed amendments to the Regulations adequately transpose the requirements of the Waste Framework Directive 2008/98/EC.
- This includes amending Regulation 13 (2) in relation to co-mingled collections
- Please email views to [djohns@apse.org.uk](mailto:djohns@apse.org.uk) by 11 April 2012

## 1. Introduction

The Waste (England and Wales) Regulations 2011 transpose the revised Waste Framework Directive 2008/98/EC. A Judicial Review is challenging the inclusion of co-mingled collection as a form of separate collection in Regulation 13 as being contrary to the Directives aims and obligations to promote high quality recycling, and a failure to correctly transpose the Directive. Defra and the Welsh Government are proposing to amend Regulation 13 and are seeking views on whether the proposed amendments to the Regulations adequately transpose the requirements of the Directive.

This briefing paper summarises the changes proposed and asks for responses/views of APSE member authorities to be emailed through to [djohns@apse.org.uk](mailto:djohns@apse.org.uk) by 10 April 2012. APSE will then consolidate the findings and respond to the consultation on behalf of its member authorities. A copy of the full consultation is available from the Defra website by clicking [here](#).

## **2. The Waste Framework Directive - background**

The Waste Framework Directive 2008/98/EC1 came into force in December 2008. This included a number of new provisions that required transposing into law within the UK. These included Article 11(1) which requires member states:

- *To “take measures to promote high quality recycling and, to this end,” to “set up separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors”; and*
- *To set up separate collection “for at least the following: paper, metal, plastic and glass” by 2015. This requirement is subject to Article 10(2) of the rWFD.*

Article 10 (2) of the Directive states:

- *Where necessary to comply with paragraph 1 and to facilitate or improve recovery, waste shall be collected separately if technically, environmentally and economically practicable and shall not be mixed with other waste or other material with different properties.*

This Article in turn refers to Article 10 (1) which states:

- *Member States shall take the necessary measures to ensure that waste undergoes recovery operations, in accordance with Articles 4 and 13.*

In addition “collection” and “separate collection” are defined respectively at Articles 3(10) and 3(11) as:

- *“the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility”*
- *“separate collection” means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment”*

## **3. The Waste Regulations (England and Wales) 2011**

The Waste Regulations (England and Wales) 2011 were made following on from consultation on the Waste Framework Directive and they included the following provisions:

### Duties in relation to collection of waste

*13.—(1) An establishment or undertaking which collects waste paper, metal, plastic or glass must, from 1st January 2015, take all such measures to ensure separate collection of that waste as are available to the establishment or undertaking in that capacity and are—*

- (a) technically, environmentally and economically practicable; and*
  - (b) appropriate to meet the necessary quality standards for the relevant recycling sectors.*
- (2) For the avoidance of doubt, co-mingled collection (being the collection together with each other but separately from other waste of waste streams intended for recycling with a view to subsequent separation by type and nature) is a form of separate collection.*
- (3) 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.*

In addition, the Regulations included a more general requirement in relation to separate collection and promoting high quality recycling as part of the provisions on waste management plans.

#### Policies in relation to separate collection of waste

*“Measures to promote high quality recycling including the setting up of separate collections of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors”.*

A Judicial Review against the Secretary of State for Environment, Food and Rural Affairs and the Welsh Ministers has been brought, claiming that regulation 13 fails to correctly transpose the requirements of the Directive (detailed in section 2 above). In particular, that regulation 13 (2) setting out that co-mingled collection is a form of separate collection is contrary to the Directive’s aims and obligations to achieve separate collection of four waste streams by 2015, and that separate, not co-mingled, collection is desirable for reasons including that it achieves a higher standard of recycle material.

Defra and the Welsh Government recognise that as drafted Regulation 13 does not accurately reflect the requirements on separate collection by 2015. In particular, that Regulation 13(2) needs to be amended, as co-mingled collection is not the same as separate collection. Furthermore, Regulation 13(3) in its current form includes an obligation on waste collection authorities to collect by means of separate collection which is not qualified, as it should be, in the same way as the obligation on establishments and undertakings in 13(1).

## **4. Proposed changes**

They are proposing to amend the Regulations to the following:

#### 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 is—*

*(a) technically, environmentally and economically practicable; and*

*(b) necessary to meet the appropriate quality standards for the relevant recycling sectors.*

## **5. What this means**

This places an obligation on waste collection authorities that when they collect (or make arrangements for the collection of) paper, glass, metal and plastic after 1 January 2015, they must do so by means of separate collection. However, this is not required if it is not practicable (as set out in regulation 13(4)(a)) or necessary (as set out in 13(4)(b)). Therefore, if collection systems other than separate collection (e.g. involving some form of co-collection of recyclables) can deliver material that meets the appropriate quality

standards for the relevant recycling sectors then that fulfils the obligation. The fact that the proposed draft amending regulations no longer refer expressly to co-mingled collection does not mean that such collection is not possible, in cases where the obligation for separate collection does not apply.

The consultation paper states: *'The amendment does not alter our underlying position that the Regulations should not mandate a particular form of recycling collection. It remains the intention that local authorities and waste management companies should have the ability to determine the most appropriate collection system for their local circumstances, having regard to the need to meet the purpose of the Directive.'* (Paragraph 5.12)

Both Defra and the Welsh Government intend to separately produce guidance on the separate collection provisions. The consultation paper (see Annex B) recognises that the following terms in particular need to be understood on the ground:

- Technically, environmentally and economically practicable
- Necessary to meet the appropriate quality standards for the relevant recycling sectors

The intention is to start work on this guidance following on from the publication of the European Commission's guidance and satisfactory resolution of the Judicial Review which the proposed amendment is addressing.

Also contained in Annex B is that Defra and the Welsh Government are currently considering how to develop the Material Recovery Facility (MRF) code of practice to make it mandatory. If they do decide to make this mandatory then this will be subject to consultation, which is likely to take place this summer.

## **6. Conclusion**

APSE would appreciate feedback from its member authorities on whether you think that the amendments proposed in the Regulations adequately transpose the requirements of the Directive. If not, please identify the specific requirement of the Directive and give reasons to support your view that it is not adequately transposed in the proposed changes. Please email responses through to [djohns@apse.org.uk](mailto:djohns@apse.org.uk) by 11 April 2012.

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