



Briefing 15-05

January 2015

## **New Waste Collection Requirements and TEEP issues for local authorities (England and Wales)**

**To: All Chief Executives, Main Contacts and APSE Contacts and for Scotland and Northern Ireland for information only**

### **Key Issues**

- The revised Waste Framework Directive (2008/98/EC) requires EU member states up set up separate collection of waste where necessary and practicable
- The Government and the Welsh Government transposed these requirements through amendments to waste regulations
- This briefing outlines some of the practical issues that will arise for local authorities in meeting the new requirements or demonstrating that they meet the TEEP criteria.

### **1. Introduction**

APSE refuse and waste contacts have been aware for some time of the difficulties potentially presented by the revised Waste Framework Directive (2008/98/EC). This new Directive in effect requires member states to set up separate collection of waste paper, metal, plastic or glass where necessary and practicable. Supporting European Commission guidance was published in June 2012 but although draft guidance was produced by DEFRA to look at guiding local authorities in England this was then dropped. This has led to some confusion and uncertainty within the sector.

The Directive's requirements have however been transposed by the Government and Welsh Government through the Waste (England and Wales) Regulations 2011, as amended by the Waste (England and Wales) (Amendment) Regulations 2012.

## **2. Environment agency non-statutory guidance**

Although statutory guidance has not been issued as initially thought the Environment Agency has now issued non-statutory guidance.

The Environment Agency guidance reminds waste Collection Authorities that Part 5 (regulations 12 - 15) describes duties for waste management and improved use of waste as a resource. Regulation 13 describes a specific requirement, by 1 January 2015, to set up separate collections of paper, plastic, metal and glass.

Collectors must comply with the law. Regulation 13 says that, from 1 January 2015: Every collector (Waste Collection Authority or establishment or undertaking collecting waste) must, when making arrangements for the collection of waste paper, metal, plastic or glass, ensure that those arrangements are by way of separate collection. The requirement to separately collect applies when

- (a) it 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; [the necessity test] and**
- (b) it is technically, environmentally and economically practicable ('TEEP') [the TEEP test]**

The Environment Agency non-statutory guidance goes on to suggest that collectors who do not have separate collection arrangements should review their collection practices and consider carefully if and how they comply. It states that *'They should rigorously apply the Necessity and TEEP tests'* and it also advises that *'Collectors who have concluded it not necessary or not TEEP to operate separate collection arrangements should keep, and be able to provide for inspection, an audit trail which will help the Environment Agency to understand the basis of their decision-making. Records should be such that, if necessary, they could*

*demonstrate compliance with the regulations in a court of law. Collectors should consult their lawyers to ensure they are compliant with this legislation.'*

Essentially the new requirements place an onus on collectors that their customers can avoid putting paper, plastic, metal or glass in the same collection container as their general waste. In addition, they are expected to collect paper, plastic, metal and glass separately from each other, subject to the above two tests. Separate collection is defined in Article 3(11) of the Waste Framework Directive as a *'the collection where a waste stream is kept separately by type and nature, so as to facilitate a specific treatment'*

### **3. Issues for local authorities**

Many APSE member authorities are concerned by the lack of statutory guidance as this they feel could hinder the consistency and robustness of approaches to ensure that local authority collection systems are compliant with the new requirements.

It is perhaps therefore useful to consider each 'test' in turn

#### **The necessity test**

The requirement to separately collect applies when:

**'It 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;**

This is essentially a simpler test to the TEEP test since in effect it seems to suggest that co-mingling will be permissible where it is demonstrated that separate collection is not necessary to provide high quality recyclates.

However, in order to ensure you are able to demonstrate that your collection methods do indeed produce high quality recyclates, it will be necessary to have this information and appropriate data to hand. It would also be useful for audit purposes to consider reporting this information to the appropriate committee within your authority; this would help to demonstrate that your information has been subject to appropriate and proportionate levels of governance and scrutiny.

## **The TEEP test**

The requirement to separately collect applies when:

**'It is technically, environmentally and economically practicable'**

This therefore raises the question as to what does 'technically, environmentally and economically practicable' mean as used in Articles 10 and 11 WFD?

APSE has therefore referred back to the what the EC guidance states, which is as follows:-

*'The combination of terms 'technically, environmentally and economically practicable' describes the preconditions for Member States being, to varying extents, obliged to set up separate collection under Articles 10 and 11 WFD. The wording has been introduced into the WFD without any preceding examples in EU waste management legislation.*

*'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' should be understood such that the added value of ecological benefits justify 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.'*

For many authorities their decision to justify a TEEP reason may well hinge on a range of differing factors; for example the types of collection containers, contracts with the MRF operator(s), cost of replacement collection systems including vehicles and containers and the current quality of the recyclates, compared to any likely improvements with separate collections. However as the Environment Agency has warned, and in line with APSE discussions at APSE advisory groups and environment events, it will be necessary to not just carry out an assessment as to whether the 'necessity' and 'TEEP' tests have been met, but to be able to demonstrate this to the Environment Agency as the regulatory body.

This means a robust approach to reviewing your decisions in light of the new regulations and more especially in the absence of statutory guidance. It is worth noting that Article 11(1) of the Directive states that collections should '...meet the necessary quality standards for the relevant recycling sectors' but does not of itself define 'high quality' but nevertheless in reviewing compliance with the new requirements it is likely that local authorities should have regard to what the recycling sector standards are for a given material, and again be able to demonstrate that they are able to meet those standards, with current collection methods. The Environment Agency guidance refers to one test of high quality recycling being 'closed loop' recycling whereby the material can be reprocessed back into a product of similar quality to what it was originally.

#### **4. Other issues to note**

**Commercial and trade waste:-** Commercial and trade waste is covered by the new regulations - for at least the 4 recyclable materials. Regulation 13 covers any 'establishment or undertaking' collecting dry recyclables – this includes commercial waste collections as well as household waste collections. This will be important to note for authorities with both existing trade waste operations and those looking to expand or develop Trade Waste services. Whilst using the prisms of 'necessity' and 'TEEP' to look at existing service may be perfectly justifiable will this be the case for a newly designed service? Arguably where that service needs to make use of existing vehicles and containers and so forth to be viable then that may be acceptable but conversely ignoring the new regulatory requirements and setting up a completely new service, with new vehicles, new containers and new disposals contracts or arrangements may be more difficult to justify.

**Responsibilities on waste producers and brokers:-** Regulation 13 applies to collectors, so they are obliged to offer a collection service to their customers that complies with the law. Regulation 12 applies to producers of the waste, and they have a responsibility to take all reasonable steps to apply the Waste Hierarchy in priority order. The Environment Agency has stated that they expect producers and collectors, and brokers where they are used, to *'work together to find the right collection system for them, that maximises recycling and complies with the law'*.

**Bring banks:-** The Environment Agency has stated that Bring-based systems can provide a means of collecting recyclable materials separately. Different systems may be appropriate for different areas or for different housing types within an area and can be considered as part of the necessity and TEEP tests. Waste collectors will need to take all factors into account (including their obligations under the Environmental Protection Act 1990) when deciding on the system(s) to use in their area.

## **5. Enforcement and monitoring issues**

The Environment Agency is the enforcement authority in England and is responsible for ensuring that the regulations are applied. This role will fall to Natural Resources Wales (NRW), the Scottish Environmental Protection Agency (SEPA) and the Northern Ireland Environment Agency (NIEA) who have the equivalent responsibilities for Wales and Scotland and Northern Ireland.

As this is a new area of regulation, and as ought to be expected, there is a transitional period to enable local authorities and other waste collectors to gear up in order to comply with the new regulations the Environment Agency has indicated a lead-in period as follows:-

**January to March 2015:** Collectors will be asked for information on their collection methods and, where appropriate, seek evidence on the application of Necessity & TEEP tests.

**June 2015:** Information on quality of recyclables from Materials Recovery Facilities available. Monitor and compare recycling performance (quality and quantity) across local councils and commercial collectors.

**Beyond:** Ongoing risk-based regulatory activity, to include periodic review of collection systems and updates on improvements undertaken.

The Environment Agency view enforcement action as a last resort and intend to focus initially on campaigns to target sub-sectors within the waste collection sector. They will also monitor information and look for any obvious or indicative breaches of the regulations and take corrective action as necessary. They have said that they will 'work with collectors

to help them to comply, by holding practical conversations or issuing advisory letters in the first instance. Further action will be taken only where necessary'.

## **6. APSE Comment**

This is a new area of regulation and one which has caused some concerns. Whilst APSE supports the vision of waste as a resource, as outlined in APSE / Infrangilis research 'Sustainability in Austerity' [ Philip Monaghan in association with APSE Greenleaf publishing 2011] in the current climate there are a number of pressures on local authority refuse collection services, not least financial.

Money for recycling education campaigns is being reduced as a result of cuts to payments for recycling credits by Waste Disposal Authorities on Waste Collection Authorities; there is also a genuine belief that in some areas recycling is now 'flat-lining' and there has not been sufficient emphasis on waste reduction (for example with supermarkets and food packaging issues); tracking waste contamination can also be a costly exercise and enforcing against wilful contamination is of itself an on-going, and costly process, which local authorities continue to grapple with, often faced with misleading and adversarial local media coverage. In the midst of these issues therefore the further requirements presented by the new regulations will no doubt prove challenging even if such a challenge simply amounts to providing the strong and robust evidence of compliance with the new regulations at a local level.

APSE will continue to develop policies on this area and the new regulations and TEEP in particular will be the subject of a forthcoming survey to gauge the 'State of the Market in waste and recycling services. For further details about this issue please contact APSE's principal advisor for environmental services Wayne Priestly on [wpriestley@apse.org.uk](mailto:wpriestley@apse.org.uk). Additional briefings will be issued in respect of Wales , Scotland and Northern Ireland.

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