

Separate Collection of Recyclables

Draft Briefing Note

Version: 1 December 2014

This gives information on new regulations to those who produce or collect waste. It is not statutory guidance, but provides information to help those affected to meet the requirements. It describes how the Environment Agency will discharge its regulatory duty.

From January 2015, new regulations for public and private waste collectors require, as a default, the 'separate collection' of at least paper, plastic, metals & glass for recycling. The aim is to increase the quality and quantity of recycled material by reducing contamination. This will improve the environment, help the economy and reduce the illegal export of waste. The Environment Agency is the body to enforce these regulations in England.



Good quality recycled material with high value



Poor quality recycled material with low value, creating odour and flies nuisance and a fire hazard, sometimes illegally mis-described as Refuse Derived Fuel and exported

The new regulations

The revised Waste Framework Directive requires the UK to take measures to promote high quality recycling. These measures are implemented in England by the Waste (England & Wales) Regulations 2011, as amended in 2012. 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.

What collectors must do or know

1. 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]

2. Collectors who do not have separate collection arrangements should review their collection practices and consider carefully if and how they comply. They should rigorously apply the Necessity and TEEP tests described above. 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 and other legislation.

Legal guidance

- The [Waste \(England & Wales\) Regulations 2011](#). Note that Regulation 13 was [amended in 2012](#).
- Part 5 of the Regulations. See [Annex 1](#).
- [European Commission guidance](#) on the Waste Framework Directive (see pages 53 - 57). It includes guidance on what 'practicability' and 'necessity' mean.
- [The Minister's letter of October 2013](#), which reminded local authorities of their obligations from 2015.
- The [Judicial Review Ruling](#) which upheld the 2012 Regulations.

Separate Collection

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'*.

Technically, environmentally & economically practicable

Guidance is provided in the [European Commission guidance](#) (para 4.4).

High quality recycling

'High quality recycling' is not defined, but Article 11(1) of the Directive states that collections should *'...meet the necessary quality standards for the relevant recycling sectors'*.

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.

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 legal duty to take all reasonable steps to apply the Waste Hierarchy in priority order. We 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.

Other useful, but not statutory information

Understanding the necessity & TEEP tests

A working group representative of Local Authorities has developed a ['Waste Regulations Route Map'](#) to help collection authorities comply with the legislation. We think this is helpful and regard it as good practice. If collectors follow this thoroughly, we believe this will give them high assurance of acting

reasonably. Whilst the Route Map was developed for Local Authorities, in the absence of specific guidance for the private sector, we believe that this can be applied and adapted to commercial collectors.

Collection systems

WRAP's '[Choosing the right recycling system](#)' provides helpful advice. Separate collection does not mean that every household or business must have more bins. Many areas have kerbside sort systems. The [WRAP local authority portal](#) is a useful source of information.

High quality recycling

European Commission guidance implies that high quality means the standard that can be achieved by Separate Collection.

The Waste Regulations Route Map describes that:

'A hallmark of high quality on this approach is that material can be reprocessed back into a product of similar quality to what it was originally – what is known as 'closed loop' recycling'.

The [Zero Waste Scotland study](#) on contamination levels in source segregated recyclates has useful data.

The Resource Association's [ReQIP tool](#) provides information on the recyclate quality requirements of some reprocessors.

Co-mingling

Co-mingling will only be permissible where it is demonstrated that separate collection is not necessary to provide high quality recyclates, or where separate collection is not technically, environmentally or economically practicable.

Bring banks

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.

Taking account of local circumstances

Practicable solutions will vary according to the type, size and make-up of the customer base of each waste collector. Different solutions may also be practicable in different premises and neighbourhoods. Some collectors may consider that separate collection is not necessary/TEEP when they have applied the two tests. We will expect to see that these collectors have thoroughly reviewed the necessity and practicability of separate collection based on evidence and can present a clear audit trail of their decisions.

Other recyclable waste, e.g. food, textiles

Regulation 12 (Waste Hierarchy) is a broader/more strategic aim than regulation 13, going wider than just paper, plastic, metal and glass, and wider than just the collection stage of waste management. So, reviewing how well the hierarchy is being achieved across their waste as a whole enables waste collectors to prioritise the biggest wins. Operators can depart from the hierarchy so as to achieve the best environmental outcome where it is justified by life-cycle thinking on the overall impacts on the generation and management of the waste. They should apply best practice and seek biggest gains. The Route Map describes these requirements well.

Glass

[The Minister's letter](#) to local authority organisations in October 2013, said that in circumstances where glass shards cannot be kept out of the paper stream, or when low quality mixed glass is produced which needs further sorting and makes it uneconomic for re-melt purposes, glass should be collected separately wherever it is practicable to do so.

customer service line
03708 506 506

incident hotline
0800 80 70 60

floodline
0845 988 1188

www.environment-agency.gov.uk

How the Environment Agency will apply its regulatory role

The Environment Agency is the enforcement authority in England and it will be our responsibility to see that the legislation is applied. Natural Resources Wales (NRW) and the Scottish Environmental Protection Agency (SEPA) and the Northern Ireland Environment Agency (NIEA) have the equivalent responsibilities for Wales and Scotland and N. Ireland. With Defra, WRAP and a series of stakeholders, we have developed what we believe to be a risk-based regime.

In December 2014, we are writing to all waste collectors, via an open letter in relevant media explaining what we expect and how collectors can comply with the new regulations. From January 2015 we will start to apply the regime. We will ask operators to supply information on their current collection methods by 31 March 2015 and we will maintain a database to update that information.

Our aim is to help collectors to achieve compliance, but to be robust with those who deliberately ignore their obligations. We 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. Enforcement action will be a last resort as it is costly and time-consuming to both parties. Collectors should seek their own legal advice to support decisions they make on collection methods.

We will monitor sources of information such as WasteDataFlow, the WRAP website, returns from Materials Facilities Regulations, eDoc and feedback from local people and our Environment Officers. This information will act as indicators of whether the collector is complying with the requirements. The table below describes examples of indicators of different levels of compliance to see if further scrutiny is needed.

Examples of indicators of compliance

Level of Compliance	Indicator	Level of Intervention
High	<ul style="list-style-type: none"> Collections which are providing an on-site or doorstep separate collection, or kerbside sorting, of each paper, glass, plastic and cans. Collectors which have rigorously applied the Waste Regulations Route Map and collection arrangements are based on well-evidenced, documented and justified decision-making 	Low
Medium (Possibly failing the Necessity or TEEP test)	<ul style="list-style-type: none"> Collectors which send co-mingled collections to a MRF which is providing poor quality recyclates Collections where evidence suggests poor quality for recycling and are not separately collecting A collector advertising a new contract that is prescriptive about type of collection/sorting service unless it is clear it wants a multi-stream / separate collection A collection which has moved away from separate collection to co-mingling, or renewed to co-mingling since 2012 If one or more of the four materials is only collected through a CA site or bring banks 	Medium
Low / non compliant	<ul style="list-style-type: none"> Evidence that good quality recyclate collections deliberately sent for disposal or incineration or remixed with other waste. No or little attempt to apply the regulations. No response to requests for information Evidence from site inspections or audits where collections have led to poor management causing environmental harm, or illegal activity such as mis-description or illegal export 	High

Where indicators suggest non-compliance, we will apply the following intervention measures, in order, depending on the suspected level of compliance and the intent of the operator:

1. Advisory phone call or letter seeking to explore and understand the collection activity, and whether improvements can or should be made
2. Meeting with operator / collector for discussion
3. Site inspection
4. Site audit
5. Enforcement notice
6. Warning letter
7. Formal caution
8. Prosecution

Transition

We recognise that collection contracts can run for many years, and that collection infra-structure can have a long lifespan. Both can be prohibitively expensive to replace. We will act reasonably in considering such matters. The collection industry has known for several years that this legislation is due in January 2015. Also, even without wholesale changes to contracts, improvement measures can be made. Collectors will be required to show that they are taking all reasonable measures to comply with the regulations from January 2015, or within a reasonable time-frame.

Consultation and communication

We have developed this regulatory regime with our sponsoring Government dept. Defra, and with expert advice from WRAP. We have discussed these with the following organisations who represent public and private collectors who will be affected by the new regulations:

- Waste Network Co-ordinators
- NAWDO
- DCLG
- LGA
- Defra
- WRAP
- Resource Association
- LARAC
- CIWM
- ESA
- UKWSL
- SEPA
- NRW

Timetable

- December 2014** Communicate to those affected to confirm how we will apply the regime.
- January 2015** New regulations come into effect.
Request information from collectors on their collection methods and, where appropriate, Necessity & TEEP tests, to be provided by 31 March 2015
Monitor information for any obvious or indicative breaches of the regulations and take corrective action as necessary
- June 2015** Information on quality of recyclables from Materials Recovery Facilities available.
Monitor and compare recycling performance (quality and quantity) across local authorities and commercial collectors.
- Beyond** Ongoing risk-based regulatory activity, to include periodic review of collection systems and updates on improvements undertaken
Campaigns to target sub-sectors within the waste collection sector

For more information contact: [National Customer Contact Centre
enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)
03708 506506

customer service line
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0800 80 70 60

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0845 988 1188

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The Waste (England and Wales) Regulations 2011, as amended in 2012

PART 5 – Duties in relation to waste management and improved use of waste as a resource

12. Duty in relation to the waste hierarchy

- (1) An establishment or undertaking which imports, produces, collects, transports, recovers or disposes of waste, or which as a dealer or broker has control of waste must, on the transfer of waste, take all such measures available to it as are reasonable in the circumstances to apply the following waste hierarchy as a priority order—
 - (a) prevention;
 - (b) preparing for re-use;
 - (c) recycling;
 - (d) other recovery (for example energy recovery);
 - (e) disposal.
- (2) But an establishment or undertaking may depart from the priority order in paragraph (1) so as to achieve the best overall environmental outcome where this is justified by life-cycle thinking on the overall impacts of the generation and management of the waste.
- (3) When considering the overall impacts mentioned in paragraph (2), the following considerations must be taken into account—
 - (a) the general environmental protection principles of precaution and sustainability;
 - (b) technical feasibility and economic viability;
 - (c) protection of resources;
 - (d) the overall environmental, human health, economic and social impacts.

13. Duties in relation to collection of waste

- (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”.

14. Duty in relation to collected waste

- (1) An establishment or undertaking which collects, transports or receives waste paper, metal, plastic or glass must, from 1st January 2015, take all such measures available to it in that capacity as are reasonable in the circumstances to ensure that where that waste has been separately collected it is not mixed with other waste or other material with different properties.
- (2) This duty applies only where keeping waste separate facilitates or improves recovery.

15. Guidance

- (1) The appropriate authority (Secretary of State) may give guidance on the discharge of the duties in regulations 12 to 14.
An establishment or undertaking discharging any of the duties in regulations 12 to 14 must, in doing so, have regard to any such guidance.