



Department
for Environment
Food & Rural Affairs

Separate Collection. Developing Guidance for Waste Collection Authorities

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Overview

- From 1st January 2015 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, wherever separate collection:

(a) is necessary to ensure that waste undergoes recovery operations... and to facilitate or improve recovery; and

(b) is technically, environmentally and economically practicable.

This slide pack sets out the existing legislative requirements and key findings of the recent Judicial Review in order to inform development of new statutory guidance for local authorities on separate collection.

Structure to the slide pack

- Part 1 of the slide pack sets out a cut down version of what we already know about the requirement to separately collect by 2015 unless not necessary or TEEP, drawing on:
 - The implementing Regulations;
 - The Waste Framework Directive;
 - The European Commission's guidance; and
 - The Judicial Review findings.
- Part 2 sets out the questions which need to be addressed in developing guidance.

Part 1 – The legal requirement

- The Waste (England and Wales) Regulations 2011 as amended by the 2012 Regulations set out what WCAs will have to do.
- *From 1st January 2015 an establishment or undertaking which collects waste paper, metal, plastic or glass must do so by way of separate collection. And 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, where separate collection:*
 - (a) is necessary to ensure that waste undergoes recovery operations... and to facilitate or improve recovery; and*
 - (b) is technically, environmentally and economically practicable.*
- *WCAs will need to ensure they are correctly fulfilling their legal duties, in consultation with their own lawyers as necessary.*

Part 1– The Waste Framework Directive

This legal requirement transposes requirements in Articles 3,10,11, and 36 of the Waste Framework Directive (with references to articles 4 and 13).

- Article 11 says - *Member States shall take measures to promote high quality recycling and, to this end, shall 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.*
- *Subject to Article 10(2), by 2015 separate collection shall be set up for at least the following: paper, metal, plastic and glass.*
- Article 10(2) is a proviso that separate collection is necessary in order to comply with the waste hierarchy or in order to protect human health and the environment.

Part 1 – Waste Framework Directive

- Article 3 defines "separate collection" as *the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment.*

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:01:EN:HTML>

Part 1 – EC Guidance

The European Commission has issued guidance on the Waste Framework Directive which is relevant here. The guidance states that:

- *“‘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.”*

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

Part 1 - Judicial Review Findings

- In 2011 a Judicial Review was launched against Defra and the Welsh Government, challenging the way in which Regulations (including as amended) transposed provisions of the EU Waste Framework Directive relating to the separate collection of paper, metal, plastic and glass. The application was dismissed on Wednesday 6 March 2013.
- Mr Justice Hickinbottom’s points included:

The phrase “technically, environmentally and economically practicable” is used in the Directive as a term of art, importing the principle of proportionality and demanding a sophisticated context-driven exercise of judgment, balancing (amongst other things) the positive and negative environmental and economic effects of separate collection.

Part 1 - Judicial Review Findings 2

It was and is open to the United Kingdom to fulfil its obligations under the Directive by the system created by the 2011 Regulations, which allows a local authority to determine within its area whether separate collection is technically, environmentally and economically practicable; enforced by the Environment Agency.

It appears to be common ground that, whilst glass is a well-recognised potential contaminant, metal and plastic can be separated at a stage later than kerb-side without any significant contamination or other relevant disadvantage.

<http://www.bailii.org/ew/cases/EWHC/Admin/2013/425.html>

Part 2 - Our Aims

This slide pack is a tool to help us develop guidance on collection of municipal waste which enables Waste Collection Authorities to understand their existing duties from 2015.

It is not our intention to use the guidance to develop new policy nor to put any new burdens on Local Authorities.

Part 2 - The Questions

- How do WCAs and WDAs work together on waste collection?
- When is separate collection “necessary” for the WFD?
- What evidence should be brought to bear?
- How should WCAs consider where, when, and which streams to separately collect?
- What should be considered when determining TEEP?
- Would you apply the same principles to Commercial & Industrial waste as for Household?

Part 2 - Question One

Question1 What factors should Waste Collection Authorities consider when deciding whether separate collection is necessary in order to:

- Comply with the waste hierarchy?
- Protect human health and the environment?
- Facilitate or improve recovery?

Part Two - Question Two

- What evidence should Waste Collection Authorities draw on?

Part Two - Question Three

- How should Waste Collection Authorities consider:
 - Where they should separately collect?
If it is not necessary/TEEP to separately collect everywhere
 - When they should separately collect?
If it is not necessary/TEEP to separately collect by 2015
 - Which streams they should separately collect?
If it is not necessary/TEEP to separately collect all four streams

Part Two - Question Four

- What are the valid considerations when considering “technical, environmental and economic practicability” ?