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6D Ergon House
17 Smith Square
London SW1P 3JR



Website www.defra.gov.uk

Date **23 February 2012**

Dear Consultee

Consultation on amending the Waste Regulations 2011 on the separate collection of recycling

1. Defra and the Welsh Government are seeking views on amendments we are proposing to The Waste (England and Wales) Regulations 2011 ('the Regulations'). I would appreciate any comments or responses you wish to make by Thursday 12 April 2012.
2. The Regulations transpose the revised Waste Framework Directive 2008/98/EC ('the Directive'). A Judicial Review has challenged the transposition of the requirements of the Directive on the separate collection of recycling. Defra and the Welsh Government recognise that as drafted the Regulations do not accurately reflect these requirements and should be amended. The court has granted a six-month stay of the Judicial Review proceedings to do this, until June 2012.
3. Our proposed amendment does not represent any change in the existing policy position, either from Defra or the Welsh Government. Furthermore, there has been no change in EU law. Therefore, we are only consulting on whether the drafting changes serve to better transpose the Directive.
4. The Annex to this letter explains in more detail our proposals. This includes the draft Waste (England and Wales) (Amendment) Regulations 2012 reproduced in full.
5. An integral part of the Directive's requirements on the separate collection of recycling are the concepts of what is "technically, environmentally and economically practicable", and of "appropriate quality standards". It is both Defra's and the Welsh Government's intention to provide guidance on these issues. Our approach to these points is also included to help put our proposed drafting amendments in context.
6. Given the timeframe provided by the court; that two formal consultations on the transposition of the revised Waste Framework Directive have previously taken place; the relatively limited, albeit important, scope of the proposed amendment; and the existing awareness amongst key stakeholders of the issue and intention to propose an amendment we requesting responses in a shorter than normal period. As set out above we would appreciate responses by Thursday 12 April 2012.

7. Responses should be sent to

**Amendment to Waste Regulations Consultation
Department for Environment, Food and Rural Affairs
Area 6D Ergon House
17 Smith Square
LONDON SW1P 3JR**

Or e-mailed to: household.waste@defra.gsi.gov.uk

8. Thank you for your help in this matter. Our intention is to reach as wide a range of interested parties as possible. Please feel free to pass on to any individuals organisations that you think we may have inadvertently omitted to alert.

Michael Sigsworth
Head of Household and Local Authority Waste
Defra Waste Programme

Consultation on amending the Waste Regulations 2011 on the separate collection of recycling.

Overview

The Waste (England and Wales) Regulations 2011 ('the Regulations') transpose the revised Waste Framework Directive 2008/98/EC ('the Directive'). 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 Directive's 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. Drafting changes are needed to ensure that the Regulations reflect our understanding of the Directive more clearly. The court has granted a six-month stay of the JR proceedings to do this, until June 2012.

Our proposed amendment does not represent any change in the existing policy position, either from Defra or the Welsh Government. Furthermore, there has been no change in EU law. Therefore, we are only consulting on whether the drafting changes serve to better transpose the requirements of the revised Waste Framework Directive.

An integral part of the Directive's requirements on the separate collection of recycling are the concepts of what is technically, environmentally and economically practicable, and of appropriate quality standards. It is both Defra's and the Welsh Government's intention to provide guidance on these issues.

The draft Waste (England and Wales) (Amendment) Regulations 2012 are reproduced in full at Annex A.

The concepts of "technically, environmentally and economically practicable", and of "appropriate quality standards", are covered at Annex B, and are included to help put our proposed drafting amendments in context.

1. Background

1.1 The revised 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. In order to transpose the revised Waste Framework Directive in England and Wales, Defra and the Welsh Government conducted a two-stage consultation.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0030:EN:pdf>

1.2 Stage One² was issued in July 2009 and explained the Directive's objectives, and invited views on the transposition and implementation of specific provisions of the Directive.

1.3 Stage Two³ was issued in July 2010 and sought views on draft Waste Regulations to transpose the revised Waste Framework Directive in England and Wales; and draft guidance on applying the waste hierarchy in England.

1.4 Amongst the provisions requiring transposition was 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.*

1.5 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.*

1.6 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.*

1.7 What this shows is that the specific obligation to separately collect 4 materials by 2015 cannot be understood in isolation from the rest of Articles 10 and 11, and indeed the wider purpose of the Directive. Section 5 of this document, which sets out our proposal to amend the Regulations, addresses this further.

1.8 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”*

² <http://wales.gov.uk/consultations/environmentandcountryside/wasteframework/?lang=en> and <http://archive.defra.gov.uk/environment/waste/strategy/legislation/wasteframework/index.htm>

³ <http://wales.gov.uk/consultations/environmentandcountryside/stage2waste/?lang=en> and <http://archive.defra.gov.uk/corporate/consult/waste-framework-revised/index.htm>

- *“‘separate collection’ means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment”*

1.9 Following the two stage consultation on the revised Waste Framework Directive, The Waste Regulations (England and Wales) 2011⁴ were made. These 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.

1.10 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. Regulation 8 sets out the requirement for waste management plans, and includes that these plans must include the matters set out in Part 2 of Schedule 1. Paragraph 8 of this Schedule states:

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”.

Purpose of consultation

2.1 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 requirement of the Directive. 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.

⁴ <http://www.legislation.gov.uk/ukxi/2011/988/contents/made> and <http://www.legislation.gov.uk/wsi/2011/971/contents/made>

- 2.2 Through the process of challenge from the Judicial Review, Defra and the Welsh Government have re-examined their interpretation of Article 11(1) and the approach to transposition into domestic regulations. In addition, the European Commission have been developing guidance on the Waste Framework Directive. The final version of this guidance has not yet been published but draft versions have provided greater clarity on their interpretation of the requirements for separate collection which has helped to inform our position.
- 2.3 As a result, 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).
- 2.4 This led to Defra and the Welsh Government seeking, and being granted by the Court, a six month stay of the Judicial Review hearing, to allow a review of the whole of regulation 13 to take place and amended Regulations to be proposed. This six month period runs to 13 June 2012. The rest of this consultation sets out our approach to transposition of this aspect of the Directive and proposed amendment to the Regulations.

3 Approach to separate collection of recycling in the Directive

- 3.1 The stated purpose of the provisions on separate collection in the Directive are to facilitate and improve recovery (Article 10(2)), and to promote high quality recycling (Article 11(1)). Looking more broadly at the whole of Article 11, the purpose can be seen as to both increase the quantity of recycling and to improve the quality of recycling.
- 3.2 There are tiers of obligations concerning separate collection in the Directive. Article 10(2) includes a general obligation to encourage separate collection to facilitate recovery. Building on this, Article 11(1) includes an obligation to introduce separate collection to facilitate recycling. This is then developed into an obligation to introduce separate collection of at least paper, glass, metal and plastic by 2015. This last obligation is qualified through a reference back to being subject to Article 10(2).
- 3.3 During negotiation of the Directive, the UK understood it was not the intention of the European Commission to mandate a particular system for the collection of recycling across all Member States. The Directive expresses a preference for separate collection of recycling, as the means most likely to achieve the purpose of the Directive.
- 3.4 This preference for separate collection does not mean that separation at a subsequent point (i.e. what can generally be referred to as co-mingled collection) is not permissible

under the Directive. The preference for separate collection of recycling is predicated on the basis that this will promote high quality recycling, but other forms of collection are permissible provided they similarly deliver this purpose.

3.5 This is expressed in the Directive through the qualifications within Article 11 (1) on the general obligation for separate collection. Firstly this is only required where “*technically, environmentally and economically practicable*”. Therefore, separate collection is only required where it is practicable; where it is not, other forms of collection of recycling are permitted. Secondly separate collection is only required where “*appropriate to meet the necessary quality standards for the relevant recycling sectors*”. So, if the purpose of the Directive, to promote high quality recycling, can be delivered through means other than separate collection, whilst meeting the necessary quality standards for the relevant recycling sectors, then the use of means other than separate collection is permitted. The key determinant is delivering the purpose of the Directive - i.e. delivering the right outcome - rather than mandating a particular form of collection.

4 Approach to separate collection of recycling in England and Wales

4.1 The debate on the meaning of separate collection of recycling is often presented as a dichotomy between two opposites; kerbside sort and co-mingled collection. In looking at the range of collection systems currently in place across England and Wales it can be seen that reality is far more complex.

4.2 There is considerable variation within the main kerbside collection system types. Increasingly, as a greater range of materials is collected all types of scheme can involve some degree of co-mingling. At one end of the spectrum are kerbside sort systems where all materials are separated at kerbside and collected separately on the vehicle. At the same time, an emerging standard practice in such schemes is for cans and plastics, and in some cases paper and card, to be collected co-mingled.

4.3 There are also two-stream collections which include kerbside collection of at least one material stream separately (e.g. glass) and the co-mingled collection of other material streams (e.g. paper, metals and plastics). And at the other end of the spectrum are fully co-mingled collections of dry recyclables with sorting at a Materials Recovery Facility. All these recycling collection systems are in use in various forms in England and Wales, and a local authority may operate more than one scheme in its area.

4.4 So there is a complex variety of collection systems being operated in England and Wales. It is not as simple as contrasting kerbside sort (if by this is meant fully separate collection of recyclable materials at source) with co-mingled collection. In reality, for practical, operational and economic reasons kerbside sort systems have incorporated elements of collection of different materials together at source for subsequent separation i.e. co-mingling.

- 4.5 It is the view of the Government in England that there are inherent difficulties in attempting to impose a one size fits all solution on local authorities, and that local authorities themselves are best placed to determine the most appropriate waste collection system to use in their local area, working with their residents. This is why the Government in England considers that decisions made at a local level to reflect local circumstances are most likely to deliver the best outcome.
- 4.6 In relation to Wales, the Welsh Government considers that on balance, the best strategic, most sustainable and cost-effective outcome for Wales will be achieved by a policy of moving, over time, towards the universal adoption of kerbside sort collection systems by all waste collection authorities in Wales. The Welsh Government consulted on this issue in 2010 and, having considered the consultation responses, published the Collections Blueprint⁵ that identifies the Welsh Government's preferred kerbside sort based collection service configuration for local authorities in Wales. This document acknowledges that it would be unreasonable for the Welsh Government to expect local authorities to make rushed service changes in a way that negates recent investment, or that is outside important contract cycles (e.g. for vehicles). The Welsh Government recognises the complexity of the factors which must be considered in taking forward its policy, including the difficulties faced by local authorities in changing a waste collection system (for example if there are long term contracts with MRFs for co-mingled material, or there is significant investment in vehicle fleets or local authority owned MRFs). Accordingly, in taking forward its policy preference for kerbside sort systems, the Welsh Government has taken the view that the most appropriate approach is not to impose any particular collection system on collection authorities, but to encourage and assist collection authorities to move towards kerbside sort systems where a business case determines that this is the best approach on cost and sustainable development grounds. It is therefore, the policy of the Welsh Government to continue to allow local authorities discretion as to the collection systems they adopt as long as the requirements of Article 11 of the Directive are met from 1 January 2015.
- 4.7 While the policy positions in England and Wales are different, the underlying approach to transposing the Directive is the same. That is, that the purpose of this part of the Directive is to promote high quality recycling as an outcome, and it does not mandate a particular approach to collection, to the exclusion of all others, to achieve this. Therefore, the transposing legislation should allow both local authorities and waste management companies the ability to choose the most appropriate collection system to suit local circumstances, provided it meets the requirements of the Directive including the purpose of promoting high quality recycling.
- 4.8 Responses to our first consultation on the revised Waste Framework Directive from both public sector and businesses generally supported the freedom of choice to employ both kerbside sort and co-mingled collection systems. The quality of material

from MRFs was considered to have improved, and be capable of delivering high quality recycling, and with continued investment potential for further improvements in quality. Clearly some supported source separation, and a significant minority wanted kerbside sort prioritised over co-mingled systems. Responses to our second consultation also reflected a range of views on the merits of kerbside sort compared to co-mingled collection.

4.9 The intention in the original drafting of regulation 13 of the Waste Regulations was to ensure both that the requirements of the Directive were met, but also to assist in interpretation of these requirements in the context of the existing position in England and Wales. Responses to the consultation highlighted that there was a lack of clarity about the position of co-mingled collections, reflected in concerns that without this clarity there was a risk of “gold plating” the Directive. As a result regulation 13(2) was added with the intention of making clear that co-mingled collections of recycling were capable of being used to fulfil this obligation, for the avoidance of doubt. As explained in Section 2 of this consultation Defra and the Welsh Government recognise as drafted Regulation 13 does not accurately reflect the requirements on separate collection by 2015 and that is why we are proposing an amended Regulation.

5 Proposal for amending the Regulations

5.1 We are proposing to introduce a new regulation 13, which reads as follows:-

“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.”.

5.2 Through this regulation an obligation is placed on an establishment or undertaking (which term includes a waste collection authority), that when they collect paper, glass, metal and plastic after 1 January 2015 they must do so by means of separate collection.

5.3 In addition, a separate duty is placed on waste collection authorities to ensure, when making arrangements for the collection of those materials that they do so by way of separate collection. In the situation where WCAs operate the waste collection service themselves they can be considered an establishment or undertaking and therefore covered by the obligation in regulation 13(2). However, 13(3) has been included to address situations where the WCA contracts out the service to a waste management

company or other body so they must satisfy themselves that the collection arrangements they are contracting for fulfil the separate collection requirements.

- 5.4 As set out in Section 3, the purpose of the general obligation to introduce separate collection in Article 11(1) is to promote high quality recycling. However, the specific obligation to collect these four materials from 2015 is qualified by being subject to Article 10(2). This requires some interpretation to understand the inter-relationship between the various provisions.
- 5.5 Firstly, if it is not *“technically, environmentally and economically practicable”* to set up separate collections then establishments/undertakings and waste collection authorities are not obliged to. So there is a “practicability” qualification to the obligation. This is a straightforward copy out from the text in Article 10(2) and is included as regulation 13(4)(a).
- 5.6 Secondly there is the “necessity” qualification. Article 10 (2) sets out that *“where necessary to comply with paragraph 1 and to facilitate or improve recovery”* waste should be separately collected. Paragraph 1 refers to Article 10(1) which in turn refers to the provisions on the waste hierarchy and protection of human health and the environment. The paragraphs immediately below provide an explanation of the inter-relationship between these provisions that underpins the amended text that Defra and the Welsh Government are proposing to include as regulation 13(4)(b).
- 5.7 As stated above the specific requirement on separate collection by 2015 are subject to Article 10(2). Breaking down the “necessity” qualification as worded in this Article leads to separate collection being required if:
- 1) Recovery is a better waste management option for the material collected than disposal e.g. it can be said to *“facilitate recovery”*
 - 2) Recycling is a better waste management option for the material collected than other recovery e.g. it *“improves recovery”*
- 5.8 Once separate collection is required to enable recycling to take place then we need to consider this in conjunction with the general obligation in Article 11(1) paragraph 2 to *“promote high quality recycling and, to this end, set up separate collections of waste where.....appropriate to meet the necessary quality standards for the relevant recycling sectors”*.
- 5.9 Putting this together we have the “necessity” provision set out in Article 10(2), and the purpose of promoting high quality recycling as expressed through meeting the appropriate quality standards in Article 11(1). This is combined in the qualification set out in regulation 13(4)(b). The duty applies where separate collection is *“necessary to meet the appropriate quality standards for the relevant recycling sectors”*. This is slightly different to the text in Article 11(1), the position of “necessary” and “appropriate” have been reversed. This reflects the fact that the specific obligation to collect the four materials by 2015 is subject to Article 10(2) in the first instance, and then further qualified by Article 11(1).

- 5.10 This means that the general presumption is separate collection of paper, glass, metals and plastics by 2015. 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.
- 5.11 It is worth noting that the draft Regulations also include a 'review clause', requiring the Secretary of State to undertake a periodic review of the Waste Regulations and publish a report. This provision is included in accordance with current UK Government policy and does not form part of this consultation.
- 5.12 We have not produced an Impact Assessment to accompany this amendment. 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. As a result it does not alter the Impact Assessment we produced previously for consultation upon the revised Waste Framework Directive and the Waste Regulations.
- 5.13 However, there is a need to ensure a consistent understanding of what the obligation means. As set out in the Annex, it is both Defra's and the Welsh Government's intention to separately produce guidance on the separate collection provisions. 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. This will be accompanied by an impact assessment, or assessments, as necessary.

Question: Do you agree that the amendments proposed to the Regulations adequately transpose the requirements of the rWFD? If not, please identify the specific requirement of the rWFD and give reasons to support your view that it is not adequately transposed in the proposed amendments.

6. Timing

The court has granted Defra and the Welsh Government a six month stay, until 13 June 2012, to amend the Regulations. Given this timeframe; that two formal consultations on the transposition of the revised Waste Framework Directive have previously taken place; the relatively limited, albeit important, scope of the proposed amendment; and the existing awareness amongst key stakeholders of the issue and intention to propose an amendment

we requesting responses in a shorter than normal period. Responses are requested **by close on Thursday 12 April 2012.**

7. Responses

Please send responses to:-

**Amendment to Waste Regulations Consultation
Department for Environment, Food and Rural Affairs
Area 6D Ergon House
17 Smith Square
LONDON SW1P 3JR**

E-mail: household.waste@defra.gsi.gov.uk

Fax: 020 7238 4857

Respondents in Wales should send their responses to:

**Ms Jane Anstee
Waste Regulation Policy Branch
Welsh Government
Cathays Park
Cardiff
CF10 3NQ**

Email: waste@wales.gsi.gov.uk

7.2 When this consultation ends, we intend to put a copy of the responses in the Defra library at Ergon House, London. This is so that the public can see them. Also, members of the public may ask for a copy of responses under freedom of information legislation.

7.3 If you do not want your response - including your name, contact details and any other personal information - to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that won't count as a confidentiality request.

7.4 Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, we cannot promise that we will always be able to keep those details confidential. We will summarise all responses and place this summary on our website at <http://www.defra.gov.uk/corporate/consult>. This summary will include a list of names of organisations that responded but not people's personal names, addresses or other contact details.

7.5 To see consultation responses and summaries, please contact the library at:-

Defra

Information Resource Centre
Lower Ground Floor
Ergon House
17 Smith Square
LONDON SW1P 3JR
Telephone: 020 7238 6575
E-mail: defra.library@defra.gsi.gov.uk

Please give the library 24 hours' notice. There is a charge for photocopying and postage.

If you have any comments regarding the consultation process itself rather than on the substance of the consultation, please address them to: Defra's Consultation Co-ordinator, Area 7C Nobel House, 17 Smith Square, LONDON SW1P 3JR or email consultation.coordinator@defra.gsi.gov.uk.

Annex A

This Statutory Instrument has been made in consequence of defects in S.I. 2011/988 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2012 No.

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Waste (England and Wales) (Amendment) Regulations 2012

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Laid before the National Assembly for Wales</i>	***
<i>Coming into force</i> - - -	***

The Secretary of State is designated⁽⁶⁾ for the purposes of the European Communities Act 1972⁽⁷⁾ in relation to the environment. The Welsh Ministers are designated⁽⁸⁾ for the purposes of that Act in relation to the prevention, reduction and management of waste.

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation and commencement

1. These Regulations—

- (a) may be cited as the Waste (England and Wales) (Amendment) Regulations 2012;
- (b) come into force on [date].

Amendment of the Waste (England and Wales) Regulations 2011

- 2.**—(1) The Waste (England and Wales) Regulations 2011⁽⁹⁾ are amended as follows.
- (2) For regulation 13 substitute—

“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.

⁽⁶⁾ S.I. 2008/301.

⁽⁷⁾ 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

⁽⁸⁾ S.I. 2010/1552.

⁽⁹⁾ S.I. 2011/988.

(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.”.

(3) In regulation 38(2) (compliance notices), for “13(1)” substitute “13(2)”.

(4) In regulation 39(2) (stop notices), for “13(1)” substitute “13(2)”.

(5) In regulation 42(3) (offences), for “13(1)” substitute “13(2)”.

(6) After regulation 48, insert—

“Review

49.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Waste Framework Directive (which is implemented in part by means of these Regulations) is implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of 5 years beginning with [*coming into force date of these amending Regs*].

(5) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.”.

Date _____
Minister for Environment and Sustainable Development
Name _____
one of the Welsh Ministers

Date _____
Parliamentary Under Secretary of State
Name _____
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988).

Regulation 2(2) provides for the substitution of a new regulation 13 of those Regulations, and regulation 2(3) to (5) makes consequential changes.

Regulation 2(6) provides for the insertion of a new regulation 49, which requires the Secretary of State to review the operation and effect of the Waste (England and Wales) Regulations 2011 within 5 years after *[date]* and within every 5 years after that.

A full impact assessment of the effect of the Waste (England and Wales) Regulations 2011 on business, the voluntary sector and the public sector was prepared and annexed to the Explanatory Memorandum which is available alongside that instrument on www.legislation.gov.uk. No separate impact assessment has been produced for this instrument as no additional impact on business, the voluntary sector and the public sector is anticipated.

Annex B

Interpreting “TEEP” and “Quality Standards”

1. In applying Regulation 13 of the Waste Regulations on the ground, it clearly becomes important to understand what is “*technically, environmentally and economically practicable*” (referred to as “TEEP” in the rest of this section) and what is “*necessary to meet the appropriate quality standards for the relevant recycling sectors*” (referred to as “quality standards” in the rest of this section). These are not established terms in EU legislation and therefore some interpretation is needed to provide these terms with meaning.
2. We think there is a role at a national level for Defra and the Welsh Government to lead on providing this greater clarity. This will assist in helping local authorities and waste management companies understand the obligation that is being placed upon them, as well as providing a consistent basis for how they work with the rest of the actors in the recycling market.
3. As a starting point we expect the guidance the European Commission is producing on the revised Waste Framework Directive, to which we have previously referred, to address these issues. The publication of this guidance is expected shortly. It makes sense for our guidance to follow on from that produced by the European Commission so that their guidance can inform our domestic guidance.
4. The previous consultation and impact assessment addressed one aspect of TEEP. This was the interpretation of the requirement in relation to plastics. While the universal separate collection (except in the most extreme cases) of plastic bottles was considered to be a practical option by 2015, the position for other plastics was far less clear. The previous impact assessment set out a position that the separate collection of non-bottle plastics was unlikely to be TEEP by 1 January 2015 across the whole of England, and that further guidance would be needed on this.
5. Many of the consultation responses, primarily from local authorities, raised concerns that separate collection may not be TEEP in specific areas. These concerns included the demographics or housing stock of an area, or the need for speed of operation in densely populated areas with narrow roads. Such issues will need further consideration. The overall purpose of the Directive is to facilitate a move towards a recycling society. This means both improved quality of recycling but also increased quantities of recycling. As such the recycling service in place needs to be able to work with the needs of its customers to ensure that it is used, and sufficient material is collected.
6. Finally on TEEP we need to recognise that collection systems for waste are well established, subject to specific contracts, and supported by considerable investment. These contractual or investment reasons may mean that in some

circumstances the flexibility to adopt different collection systems is not a viable option by 2015.

7. In addition we intend to provide guidance and actions for both industry and government, on how best to promote high quality recycling as required by the Directive.

Promoting High Quality Recycling and Quality Standards

8. The general obligation in Article 11(1) to promote high quality recycling through separate collection has been transposed in the Regulations as a requirement of waste management plans (Regulations 7&8). Defra and the Welsh Government are developing a programme of work to deliver improvements in the quality of recycling that will address this requirement as part of national waste management plans.
9. This work builds on Defra's commitment in the Waste Review to working with all businesses, including waste management companies, local authorities, reprocessors, waste producers and the Environment Agency to improve the quality of recyclates. It is our belief that the market should deliver quality, but we are looking at ways to address market failures and to get the supply chain working together to help facilitate this. Similar commitments are made by the Welsh Government in Towards Zero Waste and the emerging supporting sector plans.
10. An important part of this work is the proposed Materials Recovery Facility (MRF) code of practice. The Environmental Services Association have developed a MRF code of practice, and Defra and the Welsh Assembly Government are currently considering how to develop the code to make it mandatory, and discuss a further draft of the code with key players in the supply chain (particularly reprocessors and local authorities) over the coming months. If we are minded to make the code mandatory, this would be subject to a consultation, likely to take place in summer 2012. The MRF code of practice will see increased information and transparency to MRF customers (local authorities and reprocessors) on information such as quality and composition of recyclates. This will help the supply chain to operate more efficiently, increasing visibility of where waste and recycling ends up.
11. Alongside the MRF code of practice, Defra and the Welsh Government are also considering other measures to promote quality, including developing a supply chain approach to quality, including work on transparency and meeting reprocessor specifications to ensure that all the players involved are easily and transparently able to judge the quality of recyclates. In addition we will work with the Environment Agency to maximise the effectiveness of the Waste Shipment Regulations. These other measures will be included in a Defra Action Plan on quality to be published in the Spring. This will set out the measures we would like to develop in collaboration with the whole supply chain. The Welsh Government's actions in respect of MRF quality standards and reporting will be outlined in the final version of the Collections,

Infrastructure and Markets Sector Plan which is due to be published in Spring 2012.

12. The legislation, therefore, is just the start of the process. We have accepted the need to amend the regulations, to better transpose the revised Waste Framework Directive. But it is just as important how we support the legislation through guidance and a wider package of measures to support the market and deliver improved quality recycling now and in the long term.