



12 April 2012

CONSULTATION ON AMENDING THE WASTE REGULATIONS 2011 ON THE SEPARATE COLLECTION OF RECYCLING

INTRODUCTION

1. The UK Environmental Law Association (**UKELA**) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study and formulation of environmental law in the UK and the European Union. UKELA attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Waste Working Party.
3. UKELA makes the following comments on Defra's Consultation on amending the Waste Regulations 2011 on the separate collection of recycling.

GENERAL COMMENTS

4. UKELA notes from the consultation that Defra is proposing to issue guidance on the concepts of "*technically, environmentally and economically practicable*" and "*necessary to meet the appropriate quality standards for the relevant recycling sectors*" once the European Commission has issued its own guidance on the revised Waste Framework Directive (**rWFD**). While it is unfortunate that the Commission has not yet issued its guidance in order to allow Member States to draw up their own guidance, UKELA hopes that Defra will consult on its guidance before finalising it. UKELA is keen that any such guidance should genuinely be guidance and not be treated as quasi-legislation by regulators.

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.

5. UKELA agrees that the proposed amendments better transpose the requirements of rWFD than the existing Regulation 13 of the Waste (England and Wales) Regulations 2011. As an EU Directive, the rWFD must be given a purposive interpretation and UKELA believes that the new drafting allowing both local authorities and waste management companies the ability to choose the most appropriate collection system to suit local circumstances best achieves the purpose of the rWFD of promoting high quality recycling.
6. UKELA has a further observation in relation to the transposition of the requirement in Article 10(2) of the rWFD that separately collected waste "*shall not be mixed with other waste or other material with different properties*". This requirement is transposed by Regulation 14 of the Waste (England and Wales) Regulations 2011, which provides that:

UK Environmental Law Association: making the law work for a better environment

Registered charity 299498, company limited by guarantee in England 2133283
Registered office: City Point, One Ropemaker Street, London EC2Y 9SS www.ukela.org

President: Rt. Hon. Lord Justice Carnwath C.V.O.



“14.—(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.”

7. UKELA notes that the requirement in Article 10(2) is not qualified by the words “*take all such measures available to it in that capacity as are reasonable in the circumstances to*”, which appear in Regulation 14(1).

Contacts:

Angus Evers
c/o SJ Berwin LLP, 10 Queen Street Place, London EC4R 1BE
Telephone: 020 7111 2763
Email: angus.evers@siberwin.com

Peter Harvey
c/o Practical Law Company, 19 Hatfields, London SE1 8DJ
Telephone: 020 7202 1237
Email: peter.harvey@practicallaw.com

Co-Convenors, UK Environmental Law Association Waste Working Party

UK Environmental Law Association: making the law work for a better environment

Registered charity 299498, company limited by guarantee in England 2133283
Registered office: City Point, One Ropemaker Street, London EC2Y 9SS www.ukela.org

President: Rt. Hon. Lord Justice Carnwath C.V.O.