



Response to the Welsh Government Consultation on Draft Statutory Guidance on Separate Collection of Waste Paper, Metal, Plastic and Glass

Introduction

The UK Environmental Law Association 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 or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to UK Governments with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared jointly by UKELA's Wales Working Party and its Waste Working Party.

UKELA makes the following comments on the proposals, primarily from a practical, implementation perspective rather than a legal standpoint.

General Overview

The aim of the guidance appears to be to inform local authorities and/or their waste collection contractors of their responsibilities to undertake separate waste collection of paper, metal and glass with effect from January 2015. However, it fails to address the responsibilities of commercial or industrial operators, which are also covered by the Regulations.

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The document lacks clarity and its overall structure is confusing. It does not appear to provide clear, easy to follow guidance on the collection of waste and as indicated above appears to be focused on household waste.

Throughout the draft guidance there are references to the 2011 Waste Regulations, but this particular requirement is enshrined in the 2012 Regulations, which does not define “separate collection” or refer to comingling. Within the document the position concerning “separate collection” is confusing. There would be benefit in defining this as the term implies that each material should be collected separately. However, the draft guidance states in paragraph 21 that it is not necessary to have separate bins for each material indicating that the items can be either separated at source or co-mingled. Later on in the document the terms “separately collected” and “separate collection” appear to refer only to items separated at source.

UKELA is concerned about the balance in the paper as it appears to focus more on decisions not to adopt separate waste collections rather than on the requirement to introduce separate waste collections for the specified materials. There is limited guidance on the expectations of waste collection bodies and very little detail on the role of Natural Resources Wales in monitoring compliance with the legislation. Furthermore, the guidance on the application of TEEP in determining whether or not a facility should collect the four materials separately is inadequate and focused on household waste collection. The absence of guidance to commercial and industrial waste collectors in the TEEP thresholds that will determine the enforcement position is worrying. The legal responsibilities and enforcement position needs to be transparent and more detailed advice provided on the recording of decisions.

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Specific Comments

UKELA's detailed comments on the draft guidance are provided below in the order they appear in the consultation paper:

Introduction

Paragraph 1 - should perhaps specify the “establishments or undertakings that collect, transport or receive the four waste materials” – this is not covered in the preceding references.

Paragraph 3 – could make it clearer that all those that handling the waste materials are obliged to separate them and state the conditions under which co-mingling can take place.

Paragraph 4 – what if amendments are needed in the light of the experiences of implementing the guidance?

Legal Background

Whilst technically this section looks acceptable, the drafting and its flow could be improved and better related to the overall purpose of the guidance. The section is not linked to the rest of the guidance and it is, of particular concern that the statement in paragraph 10 is read in isolation of the remainder of the text.

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Key Principles

As currently drafted the section refers to the overall aims of the Waste Framework Directive and the Waste Regulations. It would be helpful at the commencement of the section to refer to the Waste Hierarchy and how recycling fits into it together with how it links to the EU Directive and, UK regulations and guidance. . Although principles are referenced, the difference between aims and principles is unclear. The mention of higher objectives also leads to more confusion.

Furthermore, the section advises on how the waste materials should be collected (paragraphs 16 and 17) and this comes before reference to the statutory basis (paragraph 18). It is suggested that the latter should come before the former.

Paragraph 19 refers to the aim/purpose of waste separation and needs to be linked to the previous text, whilst paragraph 20 fails to direct and advise on how to undertake the tests of technical, environmental and economic practicality.

Paragraph 21 is not a principle. It sets out how separate collection can take place.

Paragraph 22 is in isolation of in which situations these terms are to be considered and there is a need for additional supportive guidance on how these “value judgements” can be applied.

The following paragraphs (23 and 24) expand a bit but are limited in their helpfulness. It would be useful to have some examples of how these judgements can be applied.

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Paragraph 26 starts with a negative statement – it should make it clear that there are requirements to record how decisions about collection are made and then continue to provide details of best practice. Again, this is not a principle but advice on how to comply with the requirements.

The final paragraph (27) sets out the duties on Natural Resources Wales and should be linked to the final paragraph (13) of the preceding section. The consequences of the various notices are unclear as is the situations in which they will be applied.

Detail

Carrying out the assessment

This sub- section is of concern. It focuses on **not** implementing the requirement, but fails to really explain the circumstances under which this can be done and is very vague about when decisions **not** to separate out waste should be reviewed.

Assessing what is necessary: does separate collection facilitate or improve recovery

Paragraph 29 is repetitive, but probably necessary if the current structure of the guidance is retained.

Paragraph 30 talks about co-mingling, but the examples given refer to the use of one particular material. There is a need for greater clarity at this point even though

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the following paragraphs 31 and 32 expand on the point. Perhaps, it would be worthwhile reviewing the order and drafting of these three paragraphs.

Paragraphs 33 and 34, which provide guidance on deciding whether to undertake separate recycling are fundamental. It is suggested that the text should be in the forefront of this section.

Assessing what is practicable

Paragraph 35 starts with a statement which states “Where separate collection is “necessary” as discussed above.....”, however, there is considerable lack of clarity in the guidance as to how a body will decide on the necessity of carrying out separate collection. Regardless, the following paragraph 36 should be merged with this one as they are on the same subject.

Technical, environmental and economic practicability considerations

This sub-section links closely with the preceding one to so it makes little sense to separate them, particularly as the case law and EC legal interpretations of “practicable” are interlinked. Furthermore paragraphs 35 and 37 are repetitive.

Paragraph 39 introduces a list of issues to consider, but fails to state in relation to what decision.

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Conclusion

UKELA's Wales and Waste Working Parties are pleased to have had this opportunity to provide views on the draft statutory guidance for the separate collection of waste paper, metal, plastic and glass. It is hoped that the Welsh Government finds these comments helpful and constructive. If necessary, UKELA would be willing to discuss further these views with officials in support of producing clear and comprehensive guidance for local authorities, the waste collection sector and others.

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