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## Consultation – summary of responses

### Draft Statutory Guidance on the Separate Collection of Waste Paper, Metal, Plastic, and Glass

December 2014



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## **INTRODUCTION**

1. The Welsh Government's consultation on the draft Statutory Guidance on Separate Collection of Waste Paper, Metal, Plastic and Glass was launched on 28 April 2014, closing on 21 July 2014. The consultation on the guidance was issued electronically to a wide range of stakeholders and was made available on the Welsh Government website.
2. We consulted on two questions:

Q1 - Do you consider the statutory guidance sets out clearly how the Welsh Government considers establishments and undertakings that collect, transport or receive waste paper, metal, plastic and glass should comply with the legal requirements laid down in Regulation 13 and 14 of the Waste (England and Wales) Regulations 2011, as amended by the Waste (England and Wales) Regulations 2012. If you have answered no, please provide a brief explanation of what you feel is not clear or should be changed in the statutory guidance, and, where relevant, the legal basis under which you consider the change(s) should be made.

Q2 – We have asked one specific question. If you have any related issues which we have not specifically addressed, please use this space to report them.

## **OVERVIEW AND SUMMARY OF CONSULTATION RESPONSES**

3. A total of thirty six consultation responses were received. The consultation period closed on 21 July 2014 and responses submitted after this date have been included.
4. The Welsh Government would like to thank all those who responded to the consultation.
5. A summary of the responses is provided below, setting out the key themes and main issues. A detailed analysis of each issue is provided. All of the consultation responses are published at Annex 1.
6. Table (i) below shows the breakdown of responses based on the sector from which the response was received.

**Table (i): Breakdown of responses by sector**

Category	Number	% of total
Local Authorities / Community & Town Councils	16	44%
Businesses	10	28%
Professional Bodies & Associations	5	14%
Members of the Public	3	8%
Government Agency	1	3%
Charitable Organisations	1	3%
<b>Total</b>	<b>36</b>	<b>100%</b>

7. The first consultation question invited a yes/no response. A quantitative assessment of yes/no responses, based on the respondents who directly answered 'yes' or 'no' to the question is set out at Table (ii) below. The majority of respondents directly answering the question agreed that the guidance clearly set out how establishments and undertakings should comply with the regulatory requirement. However, some respondents chose not to provide a direct answer, preferring to provide comments in answer to the questions. Other respondents did not explicitly respond to specific consultation questions but provided a separate set of comments.

**Table (ii): Summary of 'yes' or 'no' responses for Question 1**

Category	Number	% of total
Yes	10	28%
No	1	3%
Did not answer Y or N	25	69%
<b>Total</b>		<b>100%</b>

8. The second consultation question did not ask a specific question relating to the draft statutory guidance; instead it invited comments on any related issues that were not specifically addressed.
9. In the majority of cases, the respondents did not state that they were answering question one or question two, but provided comments which could be attributed to either question.

10. Broadly speaking, responses fell into three categories: those who agreed that the statutory guidance was clear, those who disagreed and a third group that did not clearly state agreement or disagreement. The responses to the consultation were broadly positive and the split of answers is shown in table (iii) below.

**Table (iii): Categories of Response**

Category	Number	% of total
Broadly Positive	20	56%
Broadly Negative	11	30%
Neutral	5	14%
<b>Total</b>	<b>36</b>	<b>100%</b>

## **SUMMARY OF MAIN COMMENTS**

11. Several key themes emerged from the written responses to each question. Each sector that responded had similar comments to make on the draft Statutory Guidance and therefore have been grouped together. The groups included:
- Businesses
  - Professional Bodies and Associations and Government Agencies
  - Members of the public
  - Charitable Organisations
  - Local Authority/ Community and Town Councils

## **BUSINESSES**

12. Ten businesses responded to the consultation.
13. The majority of businesses were broadly positive about the guidance. Five answered yes to question one stating that they found the draft statutory guidance clear with no issues. Of the remaining five responses, three respondents had very positive comments to make on the draft guidance while the remaining two had concerns.
14. Two business respondents voiced concerns about the space requirements to store separate containers on confined sites. They also felt that there would be a cost element to such storage and that comparison should be made between the storage at remote sites and separation at a waste transfer station.

15. One reprocessor, while not directly answering yes or no to the question, stated that the statutory guidance was very much appreciated by those in the recycling industry – *“the aim of driving up the quality of material collected for recycling and the quantity of that material actually recycled is exactly what reprocessors have been calling for.”*
16. Other business respondents supported the guidance which they felt would lead to an improvement in the quality of recovered materials prior to recycling. Their main concern was that new markets will need to be developed for products which can be manufactured from the recovered and reprocessed waste collected.
17. One business felt that there was not enough clarity around the “Technically, Environmentally and Economically Practicable” (TEEP) assessment, particularly in relation to business waste collections. Another business commented that 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.”*

## **PROFESSIONAL BODIES AND ASSOCIATIONS AND GOVERNMENT AGENCIES**

18. Five professional bodies and associations responded to the consultation. All comments were broadly positive with the respondents welcoming the draft statutory guidance document, stating that they felt that it would assist establishments or undertakings in meeting their legal requirements under the Regulations.
19. There was only one response from a government agency. This comment was broadly positive.
20. Two respondents answered the question directly, with a yes, the remaining four respondents provided positive comments regarding the draft statutory guidance.
21. Three of the respondents (two from the professional bodies and associations and one from a government agency) felt that the draft statutory guidance could be strengthened to assist waste collection businesses more. They commented that a large number of small and medium-sized enterprises (SMEs) are engaged in waste collection in Wales. Some of these, particularly those that do not currently provide separate collection for recyclable material, may need increased support and guidance.

## MEMBERS OF THE PUBLIC

22. Three members of the public responded to the consultation. The responses have been attributed to members of the public as no company/organisation has been referenced in their response. None of the respondents answered the question directly or used the consultation form. They did not answer yes or no to question one. The majority of comments concerned individual preferences around collection methods which are considered to be outside the scope of the consultation on the draft statutory guidance. These comments included:

- The number of bins needed to comply with the separate collection requirement would be inconvenient.
- If the public were to sort the waste themselves, then many would not bother recycling their waste.
- That the cost and number of vehicles required to collect all the different types of waste would be excessive.
- That recycling could be increased by the provision of waste receptacles at recycling areas in supermarket car parks.

## CHARITABLE ORGANISATIONS

23. One response was received from a Charitable Organisation. The organisation requested clarification on the definition of establishments and undertakings in respect of the types of organisations that this definition refers to.

24. The organisation expressed full support for the principles of separate collection but had concerns that it is not achievable for their sector, and was concerned that their customers may struggle to segregate waste at their sites.

## LOCAL AUTHORITY / COMMUNITY AND TOWN COUNCILS

25. The largest numbers of responses were received from this group. The comments received were broadly negative.

26. There were sixteen responses received from or on behalf of Local Authority and Community Town Councils. The responses comprised one from a community group, thirteen from individual local authorities, one from the Welsh Local Government Association (WLGA) and one from the Local Authority Recycling Advisory Committee (LARAC).

27. Three respondents stated that “Yes” they were happy that the guidance was clear in its requirements, there was one “No” response and the remaining twelve respondents only provided comments to questions one and two.
28. One Community Council was in favour of recycling, though it felt that instead of putting the onus on householders to separate their waste more effort should be put into reducing the waste in the first place, for example by minimising packaging.
29. The Community Council also asked whether the Welsh Government had considered the difficulty for many families living in small flats or tiny houses and how they would find space for several containers.
30. The principle of proportionality in European law was cited by eleven respondents in this sector. Areas referred include Articles 2-6 of the Treaty on the functioning of the European Union and the Committee of Ministers to member states within the “Code of Practice for Good Administration – Article 5”. The respondents stated that the approach taken by the Welsh Government regarding the necessity of separate collection was disproportionate to the aims of the Directive.
31. Ten respondents expressed concerns that the draft guidance disregards or is in conflict with the wider duties set out in the Local Government (Wales) Measure 2009. They expressed the view that the restrictive and prescriptive enforcement of separate collections by the Welsh Government does not allow for them to take any of the matters required by the Measure into consideration. These comments also suggested that such forced changes by the Welsh Government would mean that the Welsh Government was acting contrary to the power and/or intentions of section 60 of the Government of Wales Act 2006.
32. Nine respondents had concerns over both public participation/engagement in recycling and the wording in paragraph 38 of the guidance, namely that “*the definition of practicability does not allow for householder or business preferences about collection methods*”.
33. The respondents felt that householder participation in recycling was critical to achieve separate collection, and feedback from service users should be included in the assessment to reflect the needs and requirements of the service users (householders, businesses etc.). Additional concerns cited were that prescriptive enforcement of changes in collection processes may result in a loss of public backing and that residents should be given the opportunity to make their preferences known.

34. One respondent responded positively to this subject, stating that *“where kerbside sort systems exist, businesses need to be discouraged from selecting a comingled waste management solution ahead of a kerbside sort one just because they feel placing all four wastes together is convenient for them”*.
35. Eight local authorities made comments regarding the financial impact that making changes to service would have.
36. One local authority stated that the guidance would *“lead to increased costs and burden on resources at a time of extreme financial burden. All local authorities are looking at how they can reduce costs and an element of trust should be placed on Authorities to undertake self-challenge, rather than extensive and prescriptive guidance that one size fits all”*.
37. Seven respondents made specific comments in relation to the Technically, Environmentally and Economically Practicability (TEEP) test in their response. Comments on TEEP include:
- The lack of formal guidance of what is and is not TEEP makes it difficult to have a benchmark against which to assess collections.
  - The need to consult with the market to ascertain what is technically practicable and what the market sees as the most economic method of collection as a way forward.
  - Whether organisations will be required to keep documented evidence of the decision to provide co-mingled collections.
  - That the processes to record the individual TEEP assessments are not clearly defined in the draft statutory guidance.
  - What the process was to record assessments and whether they would be made public.
  - That the examples provided in the guidance were helpful, but that the overriding considerations for this sector would be the economic case and the possibility of a reorganisation of local government.
38. Two responses required further clarification on the four waste materials as this is not clearly defined in Article 11 of the WFD. The comments related to the collection of paper and if that included the collection of cardboard, and whether or not plastic meant all types of plastics or just plastic bottles.

39. The WLGA felt that though there were some useful interpretations in the guidance that may help local authorities, there were a number of important issues and points of clarification where further discussions with the Welsh Government were required. They commented that the guidance was misleading in the way that it interprets “improved recovery” solely as the achievement of “high quality recycling” and also commented that it should be defined in the context of quality and quantities actually being achieved by the recycling industry and not as an aspirational standard.
40. Several respondents had concerns regarding the role of Natural Resources Wales (NRW) and their role in the regulation of the requirements of the regulations. Concerns included:
- The ability of NRW to enforce a stop notice when the outcome may cause waste materials not to be collected.
  - Whether NRW is adequately resourced to enforce the regulations and ensure a level playing field.
  - The regulatory approach that NRW would take towards local authorities, and the need for such an approach to be proportionate.
41. Other concerns expressed by this sector included:
- The need for a Material Recycling Facility (MRF) Code of Practice detailing compliance with separation of material to high quality standards in the subsequent treatment process.
  - The need for a gradual phasing in of the separate collection requirement to allow for such issues as new investment and public awareness programmes.
  - The need for clarity around the circumstances when separate collections would not be deemed practicable, for example clarity around the level of street congestion that would be too high for separate collection to be viable.
  - That guidance should not be a statutory document, but should serve to assist in the decision making process; it should not be prescriptive or direct a particular outcome.
  - The need for more specific guidance regarding commercial waste collection. The need for a legal requirement for businesses to separate

their waste for collection, mirroring the obligation of the collector to provide the service.

- That the requirement to separately collect could be in conflict with the requirement in the Environmental Protection Act 1990 to collect business waste on request .

42. A number of local authorities made reference to the Collections Blueprint and the Sustainable Waste Management Grant. Neither of these issues are considered to be within the scope of the consultation on the draft statutory guidance.

## **WELSH GOVERNMENT RESPONSE**

43. The Welsh Government has examined all the points made in response to the consultation and would like to thank those who responded. Where appropriate, changes have been made to the guidance. Specific points, particularly those around points of law, will be discussed with stakeholders.

The statutory guidance is a high level document which does not seek to provide specific details on how to make an assessment of Technical, Environmental and Economical Practicability. In due course, the Welsh Government will consider whether the provision of further guidance on TEEP assessments is required. The Welsh Government also understands that some particular sectors may be unfamiliar with the requirements of the regulations and agrees that an increased level of support may be needed. The Welsh Government is working together with the Waste and Resources Action Programme (WRAP), Constructing Excellence in Wales (CEW) and Natural Resources Wales to ensure that appropriate support will be available to these sectors.

Some of the points made in the responses, for example around funding or broader Welsh Government policies, did not relate to the guidance or the legal requirement that the guidance supports. However, they contribute to our ongoing dialogue with stakeholders and will inform policy decisions going forward. They will be discussed, as appropriate, with stakeholders separately from this response.