

LINCOLNSHIRE WASTE PARTNERSHIP

14 July 2014

<b>SUBJECT:</b>	<b>Making Sense of the Waste Regulations 2011 (12 and 13)</b>
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#### **BACKGROUND INFORMATION**

The Waste (England and Wales) Regulations 2011 transposed the Waste Framework Directive into English law and imposed duties on waste collection authorities and waste disposal authorities to follow the waste hierarchy in relation to the collection of waste and the handling of collected waste.

In 2012 the Regulations were amended in light of a judicial review challenge brought by the Campaign for Real Recycling, who claimed that the Regulations failed to transpose correctly the Directive.

Regulation 13 previously stated that commingled collection of waste paper, metal, plastic or glass (being separate from residual waste) could be regarded as separate collection. However the amended version states that:

**From 1 January 2015 recyclable items will need to be collected separately, provided this is 'technically, environmentally and economically practicable'.**

The case was dismissed with the statement; TEEP is *"a sophisticated context-driven exercise of judgment, balancing (amongst other things) the positive and negative environmental and economic effects of separate collection"*

The key driver is to provide high quality recycling.

## DISCUSSIONS

### Waste hierarchy

Regulation 12 is in force now and provides: "An establishment or undertaking which imports, produces, collects, transports, recovers or disposes of waste, or which as a dealer or broker has control of waste must, on the transfer of waste, take all such measures available to it as are reasonable in the circumstances to apply the [...] waste hierarchy as a priority order."

This means that collection authorities and disposal authorities are now under a duty to "take all such measures available to it as are reasonable in the circumstances" to apply the waste hierarchy. Should a collection authority or disposal authority not comply with this duty it will commit an offence.

What constitutes all reasonable measures will require careful thought. It is not clear at this stage how the courts will interpret this wording, but collection authorities and disposal authorities will need to consider carefully what steps they are and should be taking to comply with the waste hierarchy.

### Commingling of collected waste and TEEP

Regulation 13 states that from 1st January 2015, all WCAs will be required to collect paper, metals, plastics and glass separately, where doing so is:

- "necessary to ensure that waste undergoes recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive and to facilitate or improve recovery" (the 'Necessity Test');
- "technically, environmentally and economically practicable" (the 'Practicability' or 'TEEP Test').

TEEP stands for:

- **'Technically practicable'** = *'technically developed and proven to function in practice'*
- **'Environmentally practicable'** = *'added value of ecological benefits justify possible negative environmental effects of the separate collection (e.g. additional emissions from transport)'*
- **'Economically practicable'** = *'does not cause excessive costs in comparison with the treatment of a non-separated waste stream, considering the added value of recovery and recycling'*

In light of no guidance being issued by Defra to help waste authorities work through the regulations a 'Route Map' was developed to help local authorities that collect waste to understand their legal obligations. The Route Map is particularly focused on Regulation 13; but also explores Regulation 12 requirements regarding the waste hierarchy.

The Route Map presents:

- a step by step process for councils to follow
- addresses some frequently asked questions about what the law requires
- Signposts useful resources to help councils in their assessments
- Wherever possible, it relies directly on the wording of the law, and refers back

to the EU Waste Framework Directive (WFD) of 2008, and the European Commission's guidance guidance, it will not tell a council which materials (if any) it must collect separately

### **OPTIONS**

The duty on waste collection authorities and waste disposal authorities to comply with the waste hierarchy is in force now. All waste authorities should therefore give careful thought to their waste collection, transfer, recycling, treatment and disposal arrangements and ensure that they are taking all measures available to them to apply the waste hierarchy as are reasonable in the circumstances.

In addition, waste authorities need to be planning now for the requirements coming into force on 1 January 2015 and ensuring they are prepared for these changes.

### **RECOMMENDATIONS**

This paper is for information only and therefore holds no recommendations at this stage.