

Submission from Campaign for Real Recycling

1. The Campaign for Real Recycling (CRR) welcomes the opportunity to respond to this consultation.
2. CRR has been calling upon central government and local authorities to act urgently to improve the quality of materials collected for recycling in the UK. We contend that real recycling should be about maximising the economic, environmental and social benefits of recycling for everyone, from the local council tax payer to the global re-processing industries. Our concern is that investment in collection, materials handling and sorting systems that begin by gathering a range of different materials in one bag or bin and the resulting cross-contamination could permanently undermine the environmental and financial benefits of recycling. Our campaign aims to influence local authority policy and practice, and build consensus within the UK of the economic and environmental importance of separated collections and systems that maintain the maximum economic and environmental value from secondary resources.

CRR Stakeholders and Supporters:

- Ardagh Glass
- Berryman Glass
- Bryson Recycling
- Cleanstream Recycling CiC
- Community Recycling Network UK
- Community Recycling Network Scotland
- Cylch - Wales Community Recycling Network
- DS Smith plc
- Friends of the Earth
- May Gurney
- Newport Wastesavers
- Novelis
- Palm Recycling
- Plastics Sorting Ltd
- Smurfit Kappa
- Straight plc
- Textile Recycling Association
- Tower Hamlets Community Recycling Consortium

More information can be found at www.realrecycling.org.uk

General Comments

3. CRR sees the EU revised Waste Framework Directive (rWFD) transposition as a substantial opportunity to achieve quality recycling in Scotland and could be a driver for substantial growth in the Scottish secondary materials economy. It should make contributions to local authority efficiency, green jobs, lower carbon impacts of recycling and long term material security for our industries.

4. The Scottish Government policy statement of last October is very promising in this regard and showed much vision. This is reflected in the draft regulations now before the Scottish Parliament. The landfill bans of certain wastestreams and restrictions on categories of materials allowed to feed to energy from waste incineration are cutting edge policy measures, comparable with the best in the EU. There is no conflict between Scottish Government vision and that of the rWFD.
5. In drafting these regulations and in capturing the vision, the Minister and Scottish Government officials have clearly tried to see a way in which a material value chain could be constructed for which everyone could take responsibility and know how to play their part. Indeed there may be aspects in this of a better way forward from that that offered by the rWFD itself.

Collection Regulations Inconsistent with rWFD

6. Sadly however, we have to state that some parts of the draft regulations, starting with 2J(a) and including, perhaps not exclusively, 45C(4) are, in our view, not consistent with Articles 10 and 11 of the rWFD, which they supposedly transpose.
7. As mentioned above, we recognise the ambition and vision of Scottish Government in seeking to achieve material value, but point out that compliance with the rWFD is a building block and a legal requirement in doing so. We would argue that once Scottish Government has satisfied the requirements of the rWFD, it can put further quality measures into the regulations if it so wishes. It should do so, in the opinion of CRR.
8. The wrongful transposition of an EU Directive is, as MSPs will appreciate, a most serious matter. Passing defective regulations in Parliament leaves the Scottish Government legally exposed. For this reason at least, even though there are some beneficial and urgent aspects to these regulations, CRR must urge the Scottish Parliament not to make these drafts into law.

Qualification Nutshell

9. Material quality is a main objective of the rWFD, but first and foremost, the legal requirement under rWFD Articles 10 and 11 is separate collection of paper, metals, glass and plastic. This separation is subject to technical, economic and environmental practicability (TEEP) as a qualification, but is not qualified or derogated by issues of resultant material quality, even though that quality is clearly the aim. Consequently the requirement for separation cannot be qualified in transposing regulation simply by the output material quality.
10. The draft regulations before Parliament attempt to qualify separation in that way, by quality alone, in 2J(a) and 45C(4). They would allow comingled collection of materials to continue without proper regard to the requirement for separation and the TEEP qualification. This is what makes them inconsistent with the Directive.

Comparison with England and Wales

11. A judicial review recently succeeded in obliging Defra and Welsh Government to change the wording of Regulation 13 of The Waste (England and Wales) Regulations 2011. The review was brought by UK material reprocessor interests, including some of those listed at the start of this submission. The regulation in question failed to transpose correctly Articles 10 and 11 of the rWFD, suggesting that comingling is a form of separate collection, which was clearly a contradiction.
12. A draft amended Regulation 13 is currently out to consultation by Defra/WG. The wording and import of this will be the subject of a hearing, currently set for 13th June in the High Court in Cardiff. The outcome of this hearing should give a new clarity to the situation regarding correct transposing of Articles 10 and 11 of the rWFD. This will surely be helpful to further Scottish consideration.
13. Having to ask the Scottish Parliament not to pass these draft regulations is disappointing for CRR, and no doubt equally so for MSPs to hear. We offer the hopefully consoling and contextual thought that if the Scottish Government and Parliament achieve a transposition of the rWFD later on this year after modest amendments to the draft regulations, it will still be doing rather better than Defra and its Welsh counterparts.