

<b>Committee(s):</b>	<b>Date(s):</b>
Port Health and Environmental Services	<b>18 November 2014</b>
<b>Subject:</b> Household recycling services and the requirements of the Waste Regulations 2011 (amended 2012) "TEEP"	<b>Public</b>
<b>Report of:</b> Director of the Built Environment	<b>For Information</b>

### **Summary**

The revised EU Waste Framework Directive (rWFD) includes a requirement for all collectors of waste to take measures to promote high quality recycling, and this requirement was transposed into English legislation by the Waste (England and Wales) (Amendment) Regulations 2012. This includes a specific requirement, by 1 January 2015, to set up separate collections of paper, plastic, metal and glass. The Regulations, which also cover the City's waste collected by street cleaners and via on-street recycling bins, state these materials must be collected separately unless it is not necessary to do so in order provide high quality recycled material, or it is not technically, environmentally or economically practicable ('TEEP') to do so.

It will therefore be necessary for the City of London to review the way we collect our municipal recycled material and complete a formal assessment to ascertain whether it is TEEP to collect source separated recycling material.

Initial work carried out by Officers indicates that it would not be TEEP to collect these materials separately and that is highly unlikely we will be required to change our current recycling collections. However, robust assessments and a clear audit trail of the decision making process are key to ensuring compliance.

The Environment Agency (EA) are due to issue their finalised regulatory regime in November 2014. The proposed regulatory regime states that those deemed to not be complying with the Regulations face an 8-step process to ensure compliance, which begins with a request for information and potentially culminates in prosecution.

It is therefore proposed to engage a consultancy to undertake an independent assessment to ascertain whether the City is in compliance with the legislative requirements. The outcome of this assessment will be reported back to your Committee in January 2015 with details of any changes required in order to achieve compliance with the Regulations.

### **Recommendation(s)**

Members are asked to:

- Note the report and agree a further report be presented to this Committee setting out the outcome of the assessment and the detail of any changes in service required, if any, to achieve full compliance with the regulations.

## **Main Report**

### **Background**

1. On 1 October 2012, amendments to the 2011 Waste (England and Wales) Regulations came into force through the Waste (England and Wales) (Amendment) Regulations 2012 which transpose the revised Waste Framework Directive 2008/98/EC2 (rWFD) into English legislation
2. Regulation 13 requires that from 1 January 2015 every collector of waste (including the City of London) must collect paper, metal, plastic and glass (the four materials) for recycling. It further requires that this should be by way of separate collection where it is:
  - necessary to facilitate or improve recovery (in effect, to provide high quality recyclates), and
  - technically, environmentally and economically practicable (TEEP) to do so.
3. In relation to TEEP, European Commission “Guidance on the Interpretation of Key Provisions of Directive 2008/98/EC on Waste” clarifies that:
  - “‘Technically practicable’ means that the separate collection may be implemented through a system which has been technically developed and proved to function in practice”;
  - “‘Environmentally practicable’ should be understood such that the added value of ecological benefits justify possible negative environmental effects of the separate collection (e.g. additional emissions from transport)”;
  - “‘Economically practicable’ refers to a separate collection which does not cause excessive costs in comparison with the treatment of a non-separated waste stream, considering the added value of recovery and recycling and the principle of proportionality.”
4. The objective of the regulation is to achieve high quality environmental performance through high quality and quantities of recycling. The presumption is that this will be achieved through separate collections, but this route need only be taken if the same high quality cannot be achieved by other means (the Necessity Test), and then only if it is practicable (TEEP) to collect the materials separately.
5. Whilst the TEEP test is intended to be a high hurdle, separate collection of each material must meet all three elements of the test to be required, for example if the four materials can technically be collected separately without detriment to the environment, but the economic impacts are too significant (e.g. significant costs to change and run service) then it is deemed not practicable to collect separately.
6. Regulation 13 also applies to street cleansing and on-street recycling bins in addition to collectors.
7. Interpretation of the Regulations is not straightforward and the way that the rWFD is transposed in the Regulations has been the subject of judicial review.

The original wording of Regulation 13 was amended by the Department for Environment, Food and Rural Affairs (DEFRA) and Welsh Ministers in 2012, clarifying that co-mingled recycling is not a form of separate collection.

8. In the absence of guidance from DEFRA on how to interpret the law, a “Route Map” has been created by a variety of bodies, including Waste & Resources Action Programme (WRAP) and the London Waste and Recycling Board (LWARB) to provide some guidance and interpretations of the likely practical meaning of the law. Please see Appendix A.

### **Current Position**

9. The City of London currently collects all four materials required by the Regulations, however this is through a fully co-mingled Dry Mixed Recycling (DMR) service and means that none of the four materials are collected separately.
10. Initial work carried out by Officers indicates that higher quality recycling could be achieved by separate collections, but that it is not TEEP to collect separately for the following reasons:
  - Space limitations within bin stores prohibits ability to provide additional receptacles for separate materials (technical)
  - Additional road journeys (environmental)
  - Provision of more or different types of vehicles (economic) and the necessary additional staffing
  - Provision of additional containers (economic)
  - Provision of additional plastic sacks (economic)
  - Significant rebranding and communication exercise (economic)
  - Tendering and letting of multiple material contracts (economic)
  - The collection contract the City has is mid-term and any major service overhaul would be timely and costly (economic)
  - Limited storage space in residents homes and bin stores (practical)
11. As the default requirement of the legislation is to collect all four materials separately, a specialist consultancy will be commissioned to undertake a review of the Corporation’s co-mingled DMR service to ensure a robust and independent assessment of our compliance with the new legislation.
12. The consultancy will assess whether the City’s comingled DMR is currently of sufficient quality that it does not necessitate a need to introduce separate collections. They will also model the technical, economic and environmental implications of changing our collection method to assess whether it would be TEEP to collect any or all of the four materials separately in order to improve the quality of recycling.

## **Next steps**

13. The consultancy will apply the Necessity and TEEP tests described above. Upon completion of the assessments, they will provide a report setting out their recommendations to ensure the City's compliance with the revised Regulations. This will be reported to your Committee for approval in January 2015. Should the consultancy recommend any variation to our service this will be fully detailed, along with contract variations and implications necessary to implement them. There cannot be any significant financial implications to any variation as this would not be economically practical.
14. The TEEP test will need to be reviewed on an ongoing basis. Contracts and technology may change, removing or introducing barriers to compliance which could change the outcome of the test, and thus the decision reached for January 2015 may not hold if there are significant changes in the future.
15. In particular, if it is deemed to be not economically practicable to change the recycling collection service for January 2015 due to the cost of exiting/amending current contracts, this decision will need to be re-considered at a later date when these contracts expire and therefor would not present a permanent barrier to compliance.

## **Financial Implications**

16. The £10,000 cost of the consultancy service will be met from existing local risk resources.
17. Assessments and modelling undertaken by the consultancy may show that it is necessary to adapt the co-mingled DMR recycling collection service in order to comply with the legislation change and the financial implications of this change will form part of the report detailing the required changes. However, as previously stated, if it is not economically practicable to change the service, or change the service at this time due to mid-term contracts, the City may not be required to change the service.
18. This supports the City's Corporate Plan Key Policy Priority, KPP2 Maintaining the quality of our public services whilst reducing our expenditure and improving our efficiency.

## **Legal Implications**

19. From 1 January 2015 the City should keep and be able to provide for inspection, an audit trail which will help the Environment Agency (EA) to understand the basis of the decision-making process upon which the comingled DMR recycling service operates. Records should be such that, if necessary, they could demonstrate compliance with the regulations in a court of law.
20. At time of writing, the EA have not yet finalised the regulatory regime they will adopt from January 2015. The proposed regime states they will ask waste collectors to supply information on the collection methods in place and retain

this information. The EA state in their proposed regime it is their “*aim is to help people achieve compliance, but to be robust with those who deliberately ignore their obligations. We will work with collectors to help them to comply, by holding practical conversations or issuing advisory letters in the first instance. Further action will be taken only where necessary. Enforcement action will be a last resort as it is costly and time-consuming to both parties.*” (Separate collection of recyclables, EA Briefing Note 3, version 15 October 2014)

21. The proposed regulatory regime indicates that where non-compliance is suspected, an 8-step intervention programme may be evoked to gain compliance. The first intervention measure is likely to be an “*an advisory phone call or letter seeking to explore and understand the collection activity, and whether improvements can or should be made*”. Formal caution would be the penultimate step, culminating in prosecution.
22. The confirmed regulatory regime is due to be announced November 2014.

### **Conclusion**

23. With a robust assessment, clear audit trail of the decision making process and regular review, the City should be confident in complying with the new legislation.

### **Appendices**

- Appendix A – TEEP Route map.

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## Appendix A – TEEP Route map

