

ENVIRONMENT (WALES) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Collection and Disposal of Waste

Section 65 - Requirements relating to separate collection etc. of waste

244. Section 45 of the [Environmental Protection Act 1990 \(c 43\)](#) requires local authorities in Wales to arrange to collect household waste and, on request, commercial waste produced in their area. The local authority either fulfils this function using its own resources, or arranges with a private contractor to carry out the function on its behalf. Commercial and industrial waste not falling within the local authority duties in section 45 is collected by private contractors by way of individual contract with the waste producer. Collectively, household, commercial and industrial waste is referred to in that Act, as “controlled waste”¹.
245. In addition to the requirements of section 45 of the Environmental Protection Act 1990, waste collectors must comply with the requirements of regulations 13 and 14 of the [Waste \(England and Wales\) Regulations 2011 \[S.I. 2011/988\]](#), which transpose in part, EU Directive [2008/98/EC](#) (the Waste Framework Directive). The regulations require that from 1 January 2015, subject to certain provisions, waste collectors must separately collect at least paper, metal, plastic and glass, and keep those materials separate after collection.
246. Against this background, section 65 inserts a new section 45AA (“Wales: separate collection etc. of waste”) into the Environmental Protection Act 1990. The purpose of the provisions in the new section, is to provide the Welsh Ministers with powers to extend the range of types of waste to be separately collected, and to specify the steps that must be taken to achieve increased separation of waste types.
247. In section 45AA, subsections (1) and (2) are concerned with separate collection of different waste materials. Subsection (1) applies to local authorities exercising their functions under section 45, to make arrangements for collection of controlled waste in their area, for example, with a private contractor. It requires the local authority to ensure that the collection of waste under the arrangements is consistent with applicable separation requirements.
248. Subsection (6) confers a power on the Welsh Ministers to specify separation requirements in regulations, and subsection (7) confers a related power, to specify the circumstances in which such requirements apply. The nature of separation requirements is defined in subsection (6). For example, the Welsh Ministers may specify in regulations which materials should be presented and collected separately and how the wastes should be kept separate from each other once collected. This could include specifying the level of segregation of different waste materials that may be required under different circumstances.

¹ “The terms “household, commercial, industrial and controlled” waste are defined in section 75 of the Environmental Protection Act 1990

249. Subsection (2) applies an equivalent duty to those who actually collect, keep, treat or transport controlled waste. The duty to act in accordance with applicable separation requirements is intended to apply at all stages in the waste chain, from production of the waste, to final treatment or disposal. It will affect those, including local authorities, who collect, receive or store waste, those carriers who transport waste, and reprocessors, for example, recyclers, who treat waste. The duty does not apply to individuals who are not acting in the course of a business. “Acting in the course of a business” is defined in subsection (3).
250. Subsection (10)(a) confers a power on the Welsh Ministers in regulations, to make the duty in subsections (1) and (2) subject to exceptions. This power, in conjunction with the general power in subsection (11) to make different provision for different purposes, cases or areas, will allow the Welsh Ministers to take account of the wide range of circumstances in which these provisions will apply.
251. Subsection (4) complements the requirements in subsections (1) and (2), by imposing a duty to act in accordance with applicable separation requirements on certain categories of waste producers, when presenting waste for collection. This provision requires occupiers of premises, other than householders, to present controlled waste for collection in accordance with applicable separation requirements. Such requirements may for example, include specifying types of recyclable waste materials that must be presented separately for collection.
252. Subsection (5) contains exceptions to the duty in subsection (4). The duty will not apply to occupiers of domestic households or caravans. Subsection (10)(b) provides a power for the Welsh Ministers to make subsection (4) apply subject to exceptions in addition to those in subsection (5). This will permit the Welsh Ministers to adapt the application of the duty in subsection (4) to future changes in waste collection policy.
253. Subsection (8) makes it an offence to fail to comply without a reasonable excuse, with the duty in subsection (2) or (4). By subsection (9), such offences are either-way offences; triable summarily in the Magistrates Court or on indictment in the Crown Court. The penalty on conviction is a fine. There is no limit on the amount of fine that may be imposed.
254. Subsection (11) allows the Welsh Ministers, when exercising their other powers to make regulations under this section, to make different requirements for different circumstances, or to apply requirements differently in different geographical areas. This power by its nature will be exercised in conjunction with the exercise of other powers under this section.
255. Section 45AB (Code of practice), subsections (1) and (2), provide the Welsh Ministers with a power to issue, revise or revoke a code of practice providing guidance on how to comply with the duties in section 45AA. Subsection (3) places the Welsh Ministers under a duty to consult persons that they consider appropriate before issuing a code. This might include, for example, NRW and Welsh local authorities, in addition to other stakeholders. Subsection (4) requires that once issued, the code, or any revision to an existing code, must be published and laid before the National Assembly for Wales.
256. Such a code of practice would not be directly binding on a person subject to the duties in section 45AA. However, subsection (5) makes the code of practice admissible in evidence in court proceedings, for example where a court is considering whether or not an offence under section 45AA(8) has been committed, and the court must take account of the code on questions to which it is relevant.