

Waste is only waste if we waste it*

This article looks at the impact of Part 3 of the Environment Act 2021 on waste collection authorities, including measures to reduce packaging waste, to encourage re-use and recycling and changes to the way waste will be collected.

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Whilst the world debated the future of the planet at COP26, the UK Government made its own contribution to environmental improvement with the introduction of the Environment Act 2021, receiving Royal Assent on 9 November 2021. It is a far-reaching piece of legislation covering much of today's green agenda. In this article, we look at one aspect of the Act, relating to Waste and Resource Efficiency. Part 3 of the Act introduces a number of important changes including measures to reduce packaging waste, to encourage re-use and recycling and to the way waste will be collected.

Deposit Return Schemes

The Government first touted Deposit Return Schemes (DRS) in 2018, but it now looks unlikely to be in force before 2024, a cause of some disappointment to environmental campaigners. The Act provides a framework for what a DRS will look like, as the further details are to be introduced in due course by Regulations. There is the suspicion that the cost of the administration of such a scheme has given the government cold feet on this one, with Retailers and the recycling industry still expressing preference for better resourced kerbside collection. The framework of such Regulations set out in Schedule 8 does nothing to allay such fears with the requirement for the specification of persons as "scheme suppliers", "scheme collectors" and "scheme administrators" and detailed provision applying to each category, covering issues such as content of schemes (early hopes for comprehensive coverage for most recyclables are looking less likely), payment, subsequent disposal and enforcement.

What might this mean to local authorities? If it proves to be both comprehensive and successful, one of its stated purposes of reducing littering might become a reality but also would reduce the amount of recyclable material collected at the kerbside, but potentially pushing up the differential cost of provision. Such reduction in collection rates may also have a knock on effect (both in terms of cost and income) for contracts for the offtake of recyclable materials. This might trigger change in law provisions (see below for more detailed consideration of change in law).

Food waste collection

The Environmental Protection Act 1990 contains the basic duties of waste collection authorities to collect household waste and over time this has been amended to require separate collections of recyclable waste. These provisions are now to be amended further to provide a more comprehensive statement of what must be collected separately and which recyclables can be collected together with other materials (co-mingled). The default position under the Act now is that the various waste streams (glass, metal, plastic, paper and card, food waste and garden waste) should be collected separately, unless this is not technically or economically practicable or provides no significant environmental benefit (the waste collection authority must prepare an opinion of its assessment as to why this would be the case). However, the elements of the dry waste streams and the two "wet" waste streams cannot in any circumstances be collected together.

The main difference, however, is the introduction of a new duty to carry out a separate collection of food waste. Currently, though waste collection authorities have no duty to collect food waste separately, they may do so (but only about 40% of waste collection

authorities do). For most of us, food simply goes into the general waste bin. Once these provisions are introduced, the waste collection authority will need to collect food waste not only separately from general waste, but also from dry recyclables.

However, there is a further key difference regarding food waste. Currently, the waste collection authority decides on the frequency and scheduling of the different collections. About one in six waste collection authorities carry out a weekly collection from each household of general waste, but most alternate between a general residual waste collection and a dry recyclables collection. (One or two have three and four-weekly cycles). The discrepancy is even greater in the case of the collection of recyclables, with some offering a single co-mingled bin for all dry recyclables, while others require the separation into a range of bins, boxes and bags for the different waste streams. However, it will be a requirement for food waste to be collected on a weekly basis. This adds, therefore a complication for those waste collection authorities intending to collect food and garden waste together, since the latter is not covered by this weekly requirement. Generally, garden waste is not collected that frequently, simply because it is both seasonal and does not arise at the same frequency as waste generated from within the home.

Once extracted from the residual waste stream, food waste is suitable, for composting or treatment by anaerobic digestion (a process which generates power and leaves a digestate which is suitable for land spreading in certain cases). Waste collection authorities may look therefore to enter into arrangements with specialist contractors for the food waste stream.

Change in law

These changes will cause a potential headache for both waste collection authorities and waste disposal authorities, where they have longer term contracts in place for collection, disposal and recycling. This is because the removal of any of these various recyclables from the waste stream will alter both the composition and volume of waste that are to be collected and/or treated under contractual arrangements. In the case of food waste in particular, the disposal of the residual waste stream through Energy from Waste (EfW) and Mechanical Biological Treatment facilities, makes certain assumptions about composition. For EfW facilities, the material which is to be burned needs to fall within a calorific value range. The mass balance may be upset by the removal of “wet” food waste.

The government made warm noises in response to the consultation on the Environment Bill that *“the additional burden presented by these will be appraised in line with the New Burdens Doctrine and costs of new duties will be funded, including support needed for financial, communications, contractual and technical consequences of new measures.”*

This should provide comfort to waste collection authorities who have the need to arrange for the additional collection of food waste, but it is not so clear that waste disposal authorities will be compensated for the burden of any change in law provision contained in their contracts which provide protection to the contractor against the impact of such changes.

Many of these contracts are PFI contracts or if not, nevertheless follow the same or similar wording found in such contracts to deal with a change of law. Such provisions are not always straightforward in determining which party bears the burden of such change and can be a frequent cause for dispute. It would be advisable for the contracting parties to consider the change in law position in their waste contracts before these laws come into force and for those authorities, which are about to let such contracts, to consider how these matters might be best managed.

*Will.I.Am – yes, really.

Contact



Michael Mousdale

Consultant

Michael.Mousdale@brownejacobson.com

+44 (0)330 045 2499

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