

# Legislation Committee No 4

LC4(3)-06-10 : Paper 3

## Proposed Waste (Wales) Measure

### Written Evidence submitted by The Welsh Local Government Association (WLGA)

#### Introduction

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

2. The WLGA welcomes the opportunity to respond to the formal consultation on the Proposed Waste (Wales) Measure. WLGA has been working closely with WAG on the subject material covered by the Measure and welcomes the spirit of 'co-production' that has, in the main, characterised waste policy development. In this respect, the Measure raises some areas of concern as it appears to view local government simply as a service delivery agent, unable to lead and shape services to meet the individual circumstances of their communities. This response deals in turn with each of the questions posed as part of the consultation.

#### Responses To Consultation Questions

Is there a need for a proposed measure to deliver the stated objectives of making provision to reduce the amount of waste and litter in Wales and contribute to the development of more effective waste management arrangements in Wales?

3. Good progress is being made across Wales by local authorities in their efforts to introduce more effective waste management arrangements. Recycling levels are generally on an upward trend and forward planning is in place to develop the facilities needed to deal with food waste and residual waste. The amount of biodegradable waste going to landfill is being reduced year-on-year in line with an existing set of statutory targets (under the Landfill Allowance Scheme or LAS). Provided this progress is maintained and current procurement exercises are successful then Wales should be approaching 70% recycling/composting of municipal waste by 2024/25 with the remaining 30% going to a residual treatment plant.

4. If this is indeed the outcome, then the amount of waste going to landfill would be close to zero. The explanatory memorandum notes that Ministers already have the powers to make the recycling targets statutory under the Local Government (Wales) Measure 2009 (it would not be possible to introduce fines for non-compliance via this route, but WAG has made clear that these would be a last resort under the proposed Measure in any event). The need for (and/or the timing of) a landfill ban and for penalties associated with statutory waste targets - two of the main elements of the proposed Measure - is therefore questionable from a local government perspective.

5. However it is recognised that, first, some elements of the Measure cover waste from all sectors (not just municipal); second, it will become progressively more difficult to achieve each successive percentage increase in the recycling levels; third, the 70% target was originally viewed as aspirational; and, fourth, it would be possible to meet the LAS targets without achieving the recycling targets (e.g. by sending all material that previously would have been landfilled to a residual waste treatment facility). For these reasons it is, perhaps, understandable that WAG has sought to increase the number of levers it can use to ensure 'the right type of progress' is made, that potential infraction fines from Europe are avoided and, overall, that the evolution towards more sustainable waste management practices continues. That said, however, there should be equity in WAG's approach to different waste streams - why is WAG not seeking powers to act on the other (non-municipal) waste streams in case the voluntary approach fails? Also, whether the sections of the Measure (i.e. the chosen 'levers') are appropriate is covered in paragraphs 13 to 15 below.

6. In relation to single use carrier bags, the need for the Measure is also open to question. Its provisions will be used only if a voluntary agreement with retailers does not deliver satisfactory outcomes. Powers in the Climate Change Act already enable Ministers to require retailers to keep records that would set out how net proceeds from a charge have been used. What the Measure would do is to give Ministers power over who receives the net receipts and to ensure that they are used for specified purposes. Whilst this aspect of the Measure could yield beneficial results in relation to overall waste and litter it is, arguably, not vital or necessary.

7. Finally, in relation to Site Waste Management Plans (SWMPs), Ministers already have powers under the Clean Neighbourhoods and Environment Act (2005) to make regulations regarding SWMPs. The proposed Measure would give Ministers the power to make regulations regarding fees and charging schemes for these Plans. Such powers can be defended as 'needed' only:

if voluntary efforts can be shown to be unsuccessful

if the benefits can be demonstrated to outweigh the costs (environmental as well as economic) and

if someone is prepared to take on responsibility for monitoring compliance and enforcing/administering the schemes (local authorities and the Environment Agency are both considered in the explanatory notes. Whilst local authorities' involvement via their building control role is relevant here, coverage is not complete, as private sector organisations carry out building control work for many projects).

8. Further discussions are needed between the WLGA and Environment Agency on this issue and the training implications and costs will

need to be thought through (as would potential conflicts of interest if a local authority or EA themselves are the client for a development). The costs/income from charges will depend on the decision as to how comprehensive the plans are required to be and the thresholds that are set - value and size of projects, local authority planning and building notice thresholds are mentioned as options in this respect. The views of industry will be important here too - imposition of additional charges needs to be considered carefully in the current economic circumstances (although it is accepted that SWMPs can generate savings for businesses too).

How will the proposed Measure change what organisations do currently and what impact will any such changes have?

9. The single use carrier bag powers will be used only if voluntary arrangements fail. However, knowing that the powers could be used might help to convince retailers to ensure voluntary arrangements are effective. Under a voluntary scheme the monitoring and enforcement costs have been assumed to be zero - presumably on the basis that monitoring would be restricted to returns supplied by the retailers and these would be reviewed by existing WAG officials (as well as, no doubt, the media). Assuming 'do nothing' is ruled out, anything other than the voluntary option would require monitoring and enforcement. WLGA has previously submitted comments in response to the single use carrier bag consultation exercise, which set out local government concerns relating to the difficulty of enforcement (a copy of that evidence is attached for convenience).

10. In relation to the statutory waste targets it is questionable as to whether their introduction will change what local authorities currently plan to do - they are already introducing new collection systems and are engaged in procurement exercises to help them achieve the targets. The argument put forward by WAG is that making the targets statutory will help to guarantee funding and achievement of the required results. However, the opportunity is not being taken with this Measure to apply the same logic to other sectors. WLGA believes that either all sectors should face statutory recycling targets and penalties for non-compliance - or none should.

11. The proposed Measure will also provide Welsh Ministers with the power to establish other waste targets to be met by local authorities and to establish financial penalties which could be imposed if they fail to meet these. The explanatory memorandum (para 3.27) refers to source separated food or maximum levels of energy from waste as examples of where these new powers might be applied. Local government has been in an ongoing dialogue with WAG raising concerns over attempts to prescribe methods of achieving targets. The WLGA's position is that whilst WAG has the right to propose and ultimately specify national targets/desired outcomes, local authorities as sovereign bodies have the right to determine themselves how they achieve these. Introduction of targets and penalties in relation to 'means' rather than 'ends' are a recipe for confusion - they could indeed change authorities' current practices, forcing them to change systems they have introduced and invested in (or are planning to) and limiting the opportunities for the private sector to come forward with innovative alternative proposals that meet the outcome specification.

12. In practice, landfill bans may not result in significant changes in local authorities' current plans - as these are designed to phase out use of landfill in any case. They may accelerate moves to change collection patterns to encourage more recycling and less residual waste (such as alternate weekly collection of residual waste and use of smaller residual waste containers) or favour certain collection methods (e.g. use of kerbside sorting to facilitate monitoring of waste streams). Timing of any such bans could be an issue, although the five year lead-in period suggested in the WRAP research would appear reasonable. The bans could have more impact on other (non municipal) sectors where volumes of landfill are currently higher. (This, in turn, could impact on local authorities' procurement exercises and the price received for recyclable materials if the volumes of material involved increase substantially). Also of concern is the impact landfill bans could have on fly-tipping by households and businesses (and the additional monitoring of residual waste that could be required to ensure compliance - depending on which of the options set out in the current DEFRA/WAG consultation are favoured).

13. Fees and charges for Site Waste Management Plans may increase levels of recycling by ensuring more plans are used and stimulating greater thought and creativity. However, if there are financial gains to clients and businesses themselves from such actions then a combination of inclusion in contract specifications and market forces may be at least as effective in achieving these changes.

Are the sections of the proposed Measure appropriate in terms of achieving the stated objectives?

14. As explained in previous answers, a mixture of voluntary efforts and existing requirements and plans will go a long way towards achieving the stated objectives of the proposed Measure. This applies to single use carrier bags and SWMPs (voluntary effort) and to waste targets and landfill bans (existing requirements and plans).

15. In relation to waste targets it is questionable whether statutory recycling targets will achieve the desired results - or whether they may introduce some perverse incentives. For example, the waste hierarchy would suggest that greatest effort and resource should be applied to waste prevention and minimisation. However, if penalties apply to recycling (but not to waste minimisation) there is a risk of scarce resources being targeted at a less effective part of the hierarchy. To be clear, this is not an argument for there to be statutory targets for local authorities in relation to waste minimisation too. The main drivers for waste minimisation relate to changed consumer behaviour (less and more careful consumption, more reuse and recycling) and to producer responsibility - eco-design of products with less packaging, greater ease or repair and re-use etc. It is disappointing that the only reference to producer responsibility in the explanatory memorandum for this Measure

is a reference to fact that other EU member states have made greater progress in this area.

16. Another example of 'perverse' effects would be penalising authorities where low recycling is associated with higher levels of deprivation and/or high transient populations. If residents choose not to make proper use of collection facilities - no matter how good these may be - it is unfair to penalise the local authority. Indeed penalties could result in scarce resources having to be diverted from other services, adding to the difficulties of responding to the levels of deprivation.

17. Finally on this question, it is of concern that there has been no dialogue over other forms of intervention - penalties are being put

forward as the solution. This could set a dangerous precedent in terms of WAG-local government relations. Although assurances have been given at the Ministerial Waste Programme Board that penalties would be a last resort, the message of the Measure is that the way WAG will deal with non-compliance is through financial penalties. This runs counter to the generally good working relations that have been established to date in this field.

What are the potential barriers to implementing the proposed Measure (if any) and does the proposed Measure take account of them?

18.As already indicated above, one of the greatest barriers relating to successful implementation in relation to single use carrier bags is the difficulty of enforcing any (non-voluntary) scheme (along with potential opposition from retailers).

19.The main barrier in relation to waste targets is the affordability issue. Whilst the additional funding that has been provided by WAG is welcome, the pressures on budgets in the coming years are well understood. At present, there is no certainty beyond 2011/12 in relation to grant support, yet authorities need to invest in new systems and enter into long term contracts.

20.Another potential barrier to the introduction of waste targets would be opposition / non co-operation from local government should there be attempts to introduce additional, prescriptive 'method statement' targets. As it stands, the Measure does not appear to recognise the concerns of local government about an overly prescriptive approach in relation to how targets should be met.

21.The provision in the Measure that the statutory recycling targets (levels and dates) can be reviewed is welcome. It gives some comfort to local authorities that they will not be penalised for not meeting the ambitious targets should they prove to be unrealistic despite their best endeavours (e.g. the measure may need to take account of unpredictable changes in waste composition over this lengthy period). In this respect, WLGA believes the Measure should be amended to specify clear dates when such reviews will take place. This would give certainty ('no surprises') in relation to contracts soon to be negotiated, not only for local authorities but also for the private sector operators involved.

22.The affordability barrier applies equally to landfill bans. There will be cost implications (as well as savings from reduced landfill tax) that will vary depending on the extent of coverage and the timing of the introduction of these bans.

23.In relation to SWMPs, there may be barriers in relation to adequate enforcement although further discussions are needed between WLGA/local authorities and the EA as to how this might work in practice.

What are the financial implications of the proposed Measure for organisations, if any?

24.These have been covered in the above responses but, for local authorities, to summarise they potentially include:

costs associated with the enforcement of a single use carrier bag scheme

costs associated with enforcement of SWMPs

penalties for not meeting recycling targets

penalties for not meeting other waste targets that could be introduced under the Measure

costs associated with having to change and enhance collection systems (containers, vehicles, publicity material etc)

costs associated with increased monitoring of householder participation

costs associated with additional enforcement to ensure householders do participate in recycling services

potential reduced income from recyclable material if volume/supply increases (unless new sources of demand can be generated)

potentially reduced gate fees if increased volumes of residual material enable economies of scale in treatment costs

costs of dealing with unintended consequences (e.g. increased fly tipping)

costs associated with monitoring of residual waste to ensure compliance with landfill bans

uncertainty over budgets beyond 2011/12.

25.The amounts involved will depend on various decisions that will need to be taken regarding the Measure. Once known, the implications will need to be fed into the Expenditure Sub Group discussions with WAG, in line with the 'new burdens' agreement within the recently signed 'New Understanding' between WAG/WLGA and local government.

Are there any other comments you wish to make about specific sections of the proposed measure?

26.Section 4 (1) (b) refers to indicators being specified to measure authorities' achievement of targets. The explanatory memorandum (para 3.28) sets out the link with the Local Government (Wales) Measure 2009 stating that: "Any targets made under the proposed Waste (Wales) Measure 2010 will therefore also be established as statutory targets under the Local Government (Wales) Measure 2009". The latter Measure includes the power to establish statutory Performance Indicators and Performance Standards. This would seem a sensible step, making the link between the two Measures.

27.In relation to Sections 7 and 11 on consultation, the latter refers (in sub-paragraph (c)) specifically to consulting "persons appearing to be representative of the interests of persons liable to be subject to duties under the regulations" whereas the former does not (and

this is the only difference between the two sections). Unless there are sound reasons to the contrary, it would seem sensible for the former section to include sub-paragraph (c) too.

28. In addition, in Section 7, WLGA would expect the guidance in paragraph 8 to be subject to consultation too (again in line with the New Understanding) and would welcome clarification on this point in the Measure. Likewise, there is no reference to consultation in the section on SWMPs?

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