

Legislation Committee No 4

LC4(3)-06-10 : Paper 3, Annex

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.

2.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.

Background

3.It is clear that radical action is needed to tackle the unsustainable way in which we live in Wales. Data from the ecological footprint and the actions necessary to tackle Climate Change are just two elements of this. There are also many challenging issues to be addressed in relation to the elimination and reduction of waste. These issues are acknowledged as 'givens' in terms of this response.

4.However the critical issues in terms of this consultation seem to fall into two distinct categories;

Are the proposals an effective way of meeting the stated aims of the policy?

Are they deliverable in a proportionate and effective manner?

Policy Issues

5.With single use carrier bags being one of the most visible examples of wasteful use of resources, if the charging regime for single use bags is fully understood by the wider public then it could be an effective catalyst for behavioural change. It is perhaps in this area where the policy "may" be effective.

6.Charging for single use plastic bags is a policy that has been implemented elsewhere and considered and discounted in other countries. The reasons for this are clear; there is a great deal of dispute over the effectiveness of the policy.

7.In essence there are two issues at play; does the policy make substantive savings in waste and carbon emission terms, and does it drive broader behavioural change?

8.It is clear that there is no such thing as a free single use plastic bag; the consumer is paying for it in one way or another and is certainly paying (in environmental terms) for the impact and consequences of their use and disposal.

9.Despite the excellent progress of the voluntary schemes undertaken by retailers to reduce their use there is still a substantial amount of single use plastic bags produced and used in Wales. Whilst this represents a cost in environmental terms, it is not clear from the consultation how action on this issue measures up in terms of cost effectiveness against other possible activity to tackle climate change/waste.

10.It would be disingenuous to suggest that we have the time or scope to cherry pick activity that is the most effective; the problems we face are simply too pressing to have that luxury. However, there has to be a sense that initial action is focussed on issues which deliver substantial change quickly, as the capacity to drive change is limited. This is not clear from this consultation document.

11.There is also a danger that any charging scheme could lead to perverse outcomes. There is no analysis within the document on how displacement activity would weigh against the savings made. For example, how much resource would go into making re-usable bags and for the additional purchase of bags to use as bin liners and other carriers?

12.Much of the debate about sustainability focuses upon localism in terms of food production, shops and services, travel and community. There is a fear that this policy will impact disproportionately upon small local traders and prevent small impulse purchasing that local shops often rely upon. This could impact upon their viability. Whilst not overstating this point there is little in the consultation paper which considers how the policy will impact upon different types of retailers in terms of their sales rather than just the bureaucratic burden.

13.There is arguably a greater need to encourage producers and supermarkets to reduce the packaging on goods and items sold, to reduce the amount of waste being generated in the first instance. The impact of this proposal may be to deflect attention from such efforts.

Deliverable and proportionate

14.It is clear from the responses to the specific questions posed (see below) that the policy is felt to be poorly thought through in terms

of implementation. It will place a significant burden upon regulatory authorities to police, be extremely difficult to deliver and faces a real danger of falling into disrepute because it is so difficult to enforce.

15. Our main concerns regarding the enforcement regime are around the likely cost to the regulator of what could be quite complex/protracted administrative/enforcement processes to gain compliance. Simply put, this is unlikely to be an attractive regime for anyone to enforce, particularly when competing with numerous other enforcement priorities within what are already stretched, local authority regulatory services. We would therefore recommend as simple a regime as possible within the constraints of the legislation.

16. Should WAG wish to progress the legislation as currently proposed, then as an additional burden upon local government it is essential that this process is fully funded. An alternative administration model for WAG to consider would be the establishment of a central Welsh unit (or regional units) to administer/enforce the legislation, facilitating easy reporting at a national (regional) level; establishing a specialised skill base to investigate breaches and enforce the legislation to a consistent standard.

Conclusion

17. There is merit in the concepts which underpin this policy. It will have a positive benefit in terms of waste and Climate Change and potentially in terms of behavioural change if the policy is properly communicated. It's not clear, though, how cost effective the policy would be compared with the limited impact it is expected to have. The real problems relate to the enforcement and implementation of the process as it is currently set out. As proposed, WLGA believes it to be largely unenforceable and, as a high level WAG objective, there is a risk of it falling into disrepute. An alternative would be to establish a central (or regional) unit(s) to administer/enforce the legislation.

Proposals to charge on single use carrier bags: Consultation response proforma

Full consultation - responses due 21 September

Please respond electronically to carrierbagconsultation@wales.gsi.gov.uk

Q1. Do you think 1 October 2010 is a practical date for the regulations to come into force? Please detail with your reasoning.

One of the key lessons from the introduction of the smoking ban was that a great deal of effort and resource needed to go into raising public and trader understanding and awareness of the changes and in particular the rationale for the changes. Training is also required for whoever undertakes the 'administrator' role under the Regulations. If this proceeds as outlined in the consultation as a 'civil penalty' regime, it differs significantly from the current, mainly criminal, enforcement regimes in place and used by local authority regulatory services officers (e.g. Trading Standards, Environmental Health). It would therefore be imperative that local authority officers are fully trained prior to the implementation. For these reasons, October 2010 seems ambitious and we would suggest April 2011 as more achievable to ensure all the necessary preparatory groundwork is completed.

Q2. On what areas of implementation would guidance from the Welsh Assembly Government be helpful?

Guidance on Enforcement of the Regulations
Guidance on Issuing penalty notices - to ensure some degree of consistency
Templates for all legal notices/forms
Guidance to Businesses

Q3. Which retailers, if any, should be exempt from the proposed single use carrier bag charge? Why?

From a basic competition point of view and from a regulatory aspect it is difficult to see how any exemptions can be made. This would confuse the public and retailers alike. Of key importance from an enforcement perspective will be the need for the Regulations to contain clear, unambiguous, definitions of key elements relating to the requirements such as 'single use carrier bags'; 'retailers'; 'business' etc.

Q4. What do you think the impact on SMEs in Wales of a charge on single use carrier bags will be? Please refer to any evidence if possible.

There are likely to be impacts upon impulse purchasing at local shops and a disproportionate burden in administrative terms. Obviously the research commissioned as part of this consultation will inform this.

There will also be an impact in terms of record keeping requirements - this is likely to have a disproportionate effect on SMEs compared to larger retailers who may be able to easily incorporate this requirement into existing systems. It is hard to envisage many smaller enterprises such as market traders adhering to the record keeping requirements very well which is likely to present enforcement issues in due course. This may also present difficulties for enforcement authorities in terms of the 'better regulation' agenda where authorities are encouraged to act proportionately and where a 'technical' breach of not keeping records, on its own, is unlikely in practice to result in formal enforcement action, but could take up a significant amount of local authority resources trying to gain compliance by advice.

Q5. What do you think is an appropriate price to pay for single use carrier bags?

Again the focus group work commissioned will inform this position. The purpose of this policy is to prevent the use of single use plastic bags so therefore must be set at a rate which delivers that aspiration.

Q6. What would be an appropriate price to encourage consumers to re-use carrier bags?

As Q5

Q7. What do you think will be the impact on low-income groups? Please refer to any evidence if possible.

Difficult to quantify without further work however lower income groups may have less choice in terms of where they can shop and their purchasing behaviour may be driven by differing sets of issues. This may result in a greater use of local shops due to transport issues and consequently they may be impacted disproportionately. This requires further work to determine.

Q8. Do you think the charge will impact on impulse shopping? If so -please describe.

Almost certainly in the short term and possibly even in the longer term as it will not always be possible to carry re-usable shopping bags. This may dissuade impulse buying.

Q9. What are your views on the suggested types of single use carrier bags?

The key issue is to have a very clear definition of 'single use carrier bag' including reference to size, composition etc and guidance on the appropriate authority (e.g. Independent Test House) to provide an authoritative decision on whether a bag fell within the definition. We envisage enforcement difficulties in a number of scenarios already such as where a retailer claims that a type of bag is re-usable. Also how would it be possible to determine if a bag was being re-used and therefore had been charged for previously? We would welcome the opportunity to facilitate further discussions between WAG and the local authority enforcement community on these types of issues.

Q10. Should fully compostable bags be subject to a charge?

From an enforcement perspective, yes, as it would be more straightforward. If compostable bags were excluded, this would be another factor enforcement officials would have to prove - i.e. that bag is not compostable and we would need further guidance on how to ascertain this. We anticipate this may involve further costs (e.g. testing?)

Q11. Are there other exclusions which are not mentioned which should be covered? Please provide your reasons.

It is likely but we believe that without extensive research into the full range of bags currently used and likely to be used, it is difficult to capture them all.

Q12. Do you agree that Trading Standards are the most appropriate administrators to enforce a charge on single use carrier bags?

Not necessarily. Trading Standards services are only one part of the wider local authority 'Regulatory Services' and we see no compelling reason why 'Trading Standards' as opposed to other local authority enforcement officers should be singled out as the administrators.

Indeed, we believe that to restrict the administration of this legislation in this way would most likely place constraints on administration/enforcement of the regime for a number of reasons including:

Actual number of Trading Standards staff is limited in smaller LAs and if you narrow it down further to statutorily qualified 'Weights and Measures Officers', it would be even less staff available to administer

The level of priority this legislation is likely to have is very low in relation to other Trading Standards duties

The enforcement regime (being civil) differs significantly from most other Trading Standards enforcement work which is primarily criminal

There would be little flexibility for the LA to determine how to best administer the legislation according to local conditions/working practices

The local authority 'Regulatory Services' in Wales are delivered in various different ways which are generally tailored to the needs of their local business and resident communities. This often means that 'enforcement officers' across Regulatory Services may be provided with authority to investigate a wide range of offences/breaches e.g. Smoking Ban offences. This is generally accepted as better regulation and better use of local resources as it reduces the number of different local authority officers visiting a premises. In some cases, local authorities will appoint more 'specialist' officers according to need. Some authorities choose to have highly visible enforcement officers dealing with environmental issues. The models vary to enable each local authority to deliver the most appropriate and efficient service locally. This is not seen to be a problem for consumers/businesses as LAs operate efficient 'one stop shops'; call centres and switchboards which are able to direct callers to the correct service. Neither has it presented problems for central government departments/agencies as it is common for a 'single point of contact' to be appointed for a particular enforcement remit (e.g. smoking ban; food safety) if appropriate.

The WLGA view is that it is not appropriate to single out the 'Weights and Measures authority' as the administrator. It would be preferable to designate the local authority in general to allow local decisions as to which service(s) are best placed to administer this legislation.

We would also like to highlight the potential opportunity for the Welsh Assembly Government to encourage a joined-up, collaborative approach to administration of this legislation. In order to facilitate easy 'reporting' of breaches and a consistent enforcement approach between local authority areas, there may be an opportunity for local authorities to work at a national or regional level within Wales to administer this legislation and the WLGA would be keen to explore further with WAG and local authorities any innovative, cost effective solutions which could be adopted.

Q13. Do you consider that the proposed arrangements for record keeping and publication are suitable?

From an enforcement viewpoint they will add little value and, as they currently stand, the proposals for record keeping appear to be somewhat burdensome on businesses. In practice enforcement action would never be taken solely on the record keeping issue.

Furthermore, from an enforcement perspective, we believe that it is unnecessary to legislate for this. It is in a business' interest to be able to demonstrate robustness of the system they operate under the legislation in order to prove due diligence as part of any defence, in the event they are investigated for failing to charge for a single use bag. In summary, we believe they would be better placed in separate guidance to businesses on compliance. At the very least, we feel the requirements should be simplified/reduced to a requirement to publish (annually) details of the net proceeds and uses to which they have been put. In practice we would envisage many SMEs wanting to make use of a third party facility to manage this process, as it could be a substantial additional administrative burden for SMEs.

Q14. Is the end of April a suitable time to publish annual records?

It would appear sensible to ensure everyone publishes records for the same time period (financial year) at the same time each year. We would question whether publishing this information within one month of the end of the financial year may be a challenge for SMEs? Maybe the end of May or June is more realistic?

Q15. Do you agree, in principle, that funds raised from the charge should go to a third party body to be spent on environmental projects in Wales?

In terms of public acceptance this approach would appear to be more agreeable. However this would need to be clearly communicated as part of the preparation and communication work required before any such policy was brought in. There would also need to be a degree of confidence that the resources were used in a related field, that resources generated locally should be spent locally and should not displace other funding streams. There needs to be greater clarity about what constitutes environmental projects in this context.

Q16. Would it be useful for the Welsh Assembly Government to produce a voluntary code of practice to encourage retailers to make a choice about funding environmental projects within Wales?

It may be but the basic question remains of requiring greater clarity about what constitutes environmental projects in this context. Moreover, the question remains as to the value of this 'voluntary' requirement versus the cost if it is totally unenforceable.

Q17. Are these powers reasonable?

The first three powers relating to

Entry to premises

Inspection of documents etc

Requiring production of documents etc

appear reasonable but the fourth power 'to question' is additional to what is generally contained in legislation commonly enforced by local authority regulators and would not generally be considered necessary by enforcing officers.

Q18. Are these powers sufficient to ensure that any suspected cases of non-compliance are fully and properly investigated?

As proposed, the powers appear generally adequate (except see Q19 below) to investigate breaches on a solely reactive basis - i.e. in response to complaints/reports of non-compliance. Should there be an expectation at any stage for more proactive enforcement to take place, wider powers would be advantageous e.g. a power to test purchase goods

Q19. Are any more powers required?

Yes - the power to inspect computer/electronic records and possibly the power to seize/take copies of documents/records. We would welcome the opportunity to facilitate further discussions between WAG and representatives of local authority regulatory services around the detailed drafting of any enforcement powers in the proposed legislation.

Q20. Do you think that individuals should be liable to civil sanctions? If so, in what circumstances?

Yes - for company directors in cases of consent, connivance and/or neglect and for individual employees who knowingly or recklessly commit a breach (e.g. after being trained adequately). This is comparable with other 'consumer protection' and similar legislation enforced by local authorities.

Q21. Do you think that the administrator should be able to impose fixed penalties for breaches of the regulations? If so - what kind of fixed penalties would be appropriate?

The enforcement options contained within the parent legislation (Climate Change Act 2008) are very broad and contain a range of options which, although in theory, may appear to be advantageous, may in practice be overly complex for what essentially is a very straightforward breach - failure to charge for a single use carrier bag. In general terms we would like to see the enforcement regime kept as simple as possible and would prefer a fixed penalty system, which is flexible enough to allow a range of fixed monetary penalties to be applied.

Q 22. Should there be a range of fixed penalties based on different factors? If so - what do you think are the most appropriate factors (e.g. turnover, size of business)?

Yes - this will allow a proportionate penalty to be applied. Turnover may be an appropriate factor but a key issue to consider is how the enforcement authority/officer will determine/prove this factor in order to apply the correct penalty.

Q23. If you consider that individuals, such as employees and partners, should also be liable for civil sanctions, what kind of fixed penalties would be appropriate? See the above paragraphs 10.5 and 10.6

Fixed monetary penalties of varying amounts (see Q24)

Q24. If you consider that individuals, such as employees and partners should also be liable for civil sanctions, would it be appropriate to have a range of fixed penalties based on different factors? If so, what do you think are the most appropriate factors?

A range of penalties could apply to match the different breaches able to be committed by individuals e.g. different monetary amounts for each of the following breaches:

Knowingly

Recklessly

Consent & connivance

Neglect

Alternatively a range of penalties could apply to the individual's status e.g.:

Employee

Director

Partner

Q 25. If an administrator serves a notice of intent and the person concerned wants to discharge their liability, what amount should that person be required to pay?

We acknowledge that in the interests of expediency it may be beneficial to offer a person the option to discharge their liability early at a discounted rate. We would consider anything up to a 25% discount on the fixed penalty amount would be sufficient incentive.

Q26. Do you think that the administrator should be able to impose discretionary requirements on a person for breaches of the regulations?

We would recommend a more simple enforcement regime to support these regulations based solely around fixed penalties. Additional considerations for WAG will be cost of training administrators/enforcers; cost of publicity material and information to businesses which all are likely to be increased as the regime becomes more complex.

As highlighted in Q21, although in theory a wider range of enforcement options may appear attractive, we would question their cost/benefit in relation to this legislation.

Q 27. What should the maximum monetary penalties for breaches of the regulations be for:

a) not charging for a single-use carrier bag

b) not keeping and publishing records in accordance with the regulations

c) obstructing or failing to assist, an administrator

£5,000 as this is the main breach

See our response in Q13

£5,000 - i.e. equal to the main breach otherwise it will always be in the interest of a non-compliant business to obstruct an officer and receive a lesser penalty

Q 28. If a person hasn't complied with a non-monetary discretionary requirement - should the person pay a penalty? If so, how much should the penalty be?

See Q26

Q29. Do you think that the regulations should include provisions enabling the administrator to recover its costs? If so, what costs should be recoverable?

This only applies in the case of a discretionary penalty regime which we do not generally support as outlined in Q26 above. Should such a regime ever be introduced, we feel that due to the lengthy civil process involved, the cost/benefit and unlikelihood of recovering costs in many cases would mean that the administrator would not choose to pursue this route, even should provisions be available to do so. In theory, however, should discretionary penalties be incorporated, yes we would want to see provisions to recover costs included and

would want this to cover all reasonable costs attributable to the enforcement, including staff time, legal advice etc.

Q 30. Do you think that the regulations should make provisions on:

early payment discounts;

late payments

civil recovery of costs

Yes to all three

Q31. If so - How much should any early payment discount be?

Up to 25%

Q 32. Do you think that publicity notices will support the effective implementation of the proposed regulations?

Possibly - it would be an interesting option to explore as part of a range of enforcement options. We would not oppose its inclusion.

We would want provision to be made for the administrator to recover **all** costs incurred (including staff time) should they decide to publish the notice

For further information please contact:

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