

Legislation Committee No 4

LC4(3)-07-10 : Paper 3

Proposed Waste (Wales) Measure

Written Evidence to Legislation Committee 4 submitted by Environment Agency Wales

Summary

Environment Agency Wales welcomes the opportunity to present our views on the consultation for the proposed Wales Waste Measure, which seeks to reduce the amount of waste and litter, and contribute to the development of more effective waste management arrangements in Wales.

We are mindful that there will be further consultation on the detailed regulations underpinning the proposals in the Measure. We have restricted our responses, therefore, to the high level intentions of the Measures in delivering the policy objectives stated. For each of the Measures, we have considered the consultation questions in making our response.

Regulation provides one mechanism to deliver desired behavioural changes but must form part of a suite of measures within the context of the Wales Waste Strategy to encourage reduction of waste at source and ensure that wastes are managed in the most environmentally appropriate ways.

As an organisation operating in both England and Wales, we are aware of the possible impact on organisations that cross the border of the two countries and to ensure that our staff and guidance are able to address any differences. Within subsequent detailed consultations, we would be keen to see consideration of the potential impact on companies and regulators operating within and outside Wales including appropriate cost analysis within Regulatory Impact Assessments.

1.0 Introduction

Our role is to protect and improve the environment and make Wales a better place for people and wildlife. As governments' principal advisor on the environment in England and Wales, we play a major role in the promotion of sustainability. We regulate waste management facilities, waste carriers and some waste producers through environmental permits and producer responsibility. We provide data and advice on waste and resource management to government and others and we promote good environmental practice as an exemplar organisation within the public sector.

2.0 General Observation

The proposals in the Measure are enabling provisions, giving the Welsh Assembly Government powers to prepare regulations which will be subject to further consultation and detailed Regulatory Impact Assessments. The proposals, in isolation, will contribute to the overall policy objectives to reduce waste and improve waste management in Wales. However, to assess whether these objectives will be met fully, it is necessary to consider the combined effects of the regulatory, strategic and other interventions which are still emerging. This response only considers the high level intentions of the Measure in delivering the stated objectives. We will provide further comments, based on our roles as environmental advisor and regulator, once further detail is made available through future consultations.

We welcome the clear strategic direction that Welsh Assembly Government's draft Waste Strategy for Wales "Towards Zero Waste" sets out for municipal, commercial, industrial and construction wastes. However, we are concerned that the introduction of supporting legislation appears to be piecemeal and we encourage the Welsh Assembly Government to set out a clear delivery plan (which includes a regulatory framework) for achieving the "Towards Zero Waste" outcomes. This would provide the certainty that waste operators, regulators and waste producers need.

Regulation provides one mechanism to deliver desired behavioural changes but it may not always deliver the best outcome for the environment nor be the most cost effective. A suite of approaches are needed to encourage reduction of waste at source, develop appropriate waste markets and infrastructure, and ensure that wastes are managed in the most environmentally appropriate ways.

We acknowledge that Environment Agency Wales may be required to take on additional regulatory and monitoring responsibilities, notably regarding the waste targets, landfill bans and site waste management plans. We would wish to work with Welsh Assembly Government to identify these requirements and how this might be funded to deliver environmental outcomes.

3.0 Response on the Proposals in the Measure

3.1 Single-Use Carrier Bags

We have previously responded to the Welsh Assembly Government's consultation on the proposed introduction of a charge for carrier bags. We supported the premise that the revenue raised by the charge (minus a reasonable administrative cost for the retailer) could go

to environmental projects. We also recommended that the opinion of the public be sought when distributing any potential funds to environmental projects.

The Measure relates solely to the destination of the proceeds from the retail charge, so in itself, it does not directly contribute to reduction in waste or litter. We support the backstop of a regulatory approach requiring retailers to apply the revenue to environmental projects if voluntary measures are not successful in a reasonable timescale. However, we recognise this would impose additional burdens on the retail sector and the administering body (suggested as Local Authorities within the Explanatory Memorandum) to ensure compliance.

3.2 Waste Targets

We support the use of statutory targets for Local Authorities as part of a suite of interventions to increase recycling. Our analysis shows that for Local Authority collected municipal waste, recycling has a lower ecological footprint and is therefore more sustainable than using it in energy from waste (EFW) or mechanical biological treatment (MBT) schemes. For example, recycling paper and card generates about half the greenhouse gas warming potential as energy from waste. Statutory targets for recycling will complement the existing Landfill Allowances Scheme and ensure Local Authority collected municipal waste moves further up the waste hierarchy. Waste will be diverted away from landfill and energy or low-grade material recovery, towards higher quality recycling. Recycling targets should not, however, be allowed to detract from the effort Local Authorities need to make to encourage their residents to reduce the amount of waste they generate.

The targets included for municipal waste within the measure are those consulted on within the draft Waste Strategy for Wales "Towards Zero Waste" and have been set using evidence from Life Cycle Analyses which Environment Agency Wales provided to the Welsh Assembly Government. These targets are more stringent and of broader scope than those required by the revised EU Waste Framework Directive, which is required to be transposed by December 2010. We support these more far reaching targets in order to help deliver Welsh Assembly Government's aspirations set out in "One Wales: One Planet".

The application of statutory targets also sends a signal to the waste industry about the Welsh Assembly Government's policy direction for waste management i.e. maximising recycling. This provides a level of certainty for the industry and encourages financial institutions to make appropriate investment in new infrastructure, although we accept that this market signal in isolation will not be sufficient to deliver required new infrastructure. We also recognise that further work will be needed to develop markets for recyclates collected by Local Authorities.

The draft EU Regulation on end of waste criteria, which comes into force on 13 December 2010 and the Quality Protocols (e.g. for compost), which define end of waste could affect delivery of the recycling targets. These define the point at which a waste material meets a quality standard which allows the material to be reclassified as a product and no longer subject to waste management controls. It is unclear how this will impact on the definition of "recycling" and the point in the chain when a material is deemed to be recycled, but this should be kept in mind when determining any monitoring strategy for these targets.

Environment Agency Wales already validates the data on Local Authority recycling rates in WasteDataFlow (WDF). The data is used by the Local Government Data Unit to monitor Local Authorities' performance on municipal waste recycling. However, we anticipate that governments may need to make changes to WDF. Moreover, there will be an increased focus on recyclate reject rate and final destination of wastes which could result in additional monitoring and reporting burdens on Environment Agency Wales. There are considerable practical difficulties in tracking the waste collected from doorsteps by a Local Authority through to the final destination. This is because the collected waste is often mixed together with wastes from other Local Authorities and passes through a number of processors before reaching its endpoint. We would expect to work with Welsh Assembly Government officials in scoping this work.

There will be subsequent regulations and guidance regarding penalties for Local Authorities. We would want to work with Welsh Assembly Government on the detailed regulations which could have direct effect on our regulatory duties and support delivery of our environmental outcomes. In general terms, we would support the use of penalties as a consequence for failure to comply. However, we would wish to see appropriate guidance in place to ensure Local Authorities are supported for compliance and only wilful or persistent non-compliance is financially penalised.

3.3 Landfill Restrictions

We support the overall objective of restricting materials to landfill to reduce greenhouse gases either directly (for biodegradable waste) or indirectly in terms of embedded carbon in other materials. Landfill restrictions have a place within a wider suite of interventions to divert materials from landfill towards other options further up the waste hierarchy and to meet the EU Landfill Directive Targets for municipal waste.

We anticipate that we would be the enforcing authority for any proposed regulations on landfill restrictions, and would want to work with Welsh Assembly Government on the detailed regulations to provide appropriate input on their direct effect on our regulatory duties and delivery of our environmental outcomes.

Landfill diversion is already influenced by fiscal measures (landfill tax), economics (market value of diminishing landfill void and cost of alternative waste management) and, in the case of municipal waste, regulatory measures (Landfill Allowance Scheme). However, we believe further alternative interventions, in addition to simple landfill restrictions, will be needed to drive the necessary behaviour changes to successfully divert specific materials from landfill and ensure they are managed higher up the waste hierarchy. These might include considerations of sorting requirements for producers, stimulating provision of recycling services for businesses or improving markets for quality recyclates. We are keen to support the Welsh Assembly Government in developing this more holistic approach to

ensure changes in behaviour of waste producers and to ensure that relevant alternative infrastructure is in place.

We note that the Welsh Assembly Government and Defra have launched a joint consultation on landfill restrictions. We will make a separate response to this in due course. We expect therefore that the proposal in this Measure will only need to come into force should the current joint approach with Defra be subject to delays or difficulties. A Wales only ban/restriction could result in export of waste for landfill to England or increased stockpiling of wastes and possibly flytipping of wastes in Wales. This would be a perverse outcome and we would encourage Welsh Assembly Government to consider the alternatives carefully and to ensure that bans are only imposed when there is adequate alternative capacity either through recycling or incineration.

The regulations subsequent to this proposal in the Measure have the potential to impose new duties on the Environment Agency Wales with roles in publicity, guidance, compliance and enforcement, depending on the detailed regulations. We would wish to work with the Welsh Assembly Government to determine these requirements.

The Measure also provides for us to be given powers to impose civil sanctions. Currently, civil sanctions do not apply to other activities within the Environmental Permitting (EPR) regime, although we expect new legislation to provide for these from April 2011. We would encourage Welsh Assembly Government to give careful consideration to the relative timing for EPR civil sanctions and any brought in via the regulations subsequent to this Waste Measure.

3.4 Site Waste Management Plans (SWMP)

The Measure restates powers Welsh Ministers already have in the Clean Neighbourhoods Act to make regulations to introduce SWMPs, but introduces the power to make provision for a charging scheme to recover the costs of regulation, subject to further consultation. The Welsh Assembly Government has stated its intention to consult on regulations for SWMPs later in 2010

We support the general principles of SWMPs as a tool to ensure effective and sustainable management of waste from construction.

Regulations have been in place in England for construction schemes over £300,000 since 2008. Although not a legislative requirement in Wales, a number of larger companies have adopted the SWMP approach for Welsh construction projects as good practice to better manage their waste and to deliver significant cost savings.

Within the Regulatory Impact Assessment (RIA) for the power to make a fees and charges scheme for SWMPs, the options discuss simple and comprehensive schemes which we expect would be covered in more detail within the future consultation. We anticipate the full RIA would include proposed options covering all construction projects or alternative threshold levels as well as the content of SWMPs.

Our view is that the regulations should encompass a wider range of projects and ensure that waste prevention and resource efficiency is proactively considered at the design stages for construction projects, within the planning application for greater environmental benefit. By way of comparison, the current regulations in England focus on reducing illegal waste disposal aspects rather than delivering resource efficiency objectives.

The Measure does not state who will be the enforcing authority for SWMP but scopes out options involving Local Authorities or the Environment Agency. In England, the scheme was set up on the basis that it would be self regulatory with the Client and Principal Contractor ensuring that their staff and any sub contractors abided by the requirements of their plans. Both local government authorities and the Environment Agency have enforcement powers for the regulations. Anecdotal evidence suggests that this "light touch" approach in England combined with two enforcement authorities has caused confusion and undermined the effectiveness of SWMPs. We therefore recommend a single enforcement authority in Wales and propose that Local Authorities are best placed to undertake this role because they already have the most direct involvement with the construction sector via their planning and building regulation roles.

The Regulatory Impact Assessment (RIA) details that there will be significant new duties for the regulator of this scheme, which would be funded by a charging scheme to cover compliance costs. There will also be significant set-up costs. The options as outlined, result in a widely varying range of costs (due to numbers of construction projects expecting to comply). We recommend that a detailed RIA at the next stage of consultation is required to ascertain the optimum cost to benefit before deciding on the final scheme to be proposed.

Further Information

Further information or background to this response can be obtained from Nadia De Longhi, Strategy and Policy Manager, Environment Agency Wales, Ty Cambria,

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