



RTPI

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Revised WFD Consultation (Stage One)
Waste Framework Directive Unit
Department for Environment, Food and Rural Affairs
Area 6D Ergon House
17 Smith Square
LONDON SW1P 3JR

Email response sent to: wfd@defra.gsi.gov.uk

Dear Sir/Madam,

RESPONSE TO: Consultation on the transposition of the revised Waste Framework Directive (Directive 2008/98/EC) in England and Wales

Thank you for the opportunity to respond to the above. The Royal Town Planning Institute (RTPI) is a membership organisation representing over 22,000 spatial planners. It exists to advance the science and art of town planning for the benefit of the public.

This document responds to the Consultation on the transposition of the revised Waste Framework Directive (Directive 2008/98/EC) in England and Wales.

The response has been formed drawing on the expertise of members, including the Minerals and Waste Interest Group of the RTPI Environmental Planning and Protection Network. Contribution has also been included by RTPI Wales.

If you require any further assistance, please contact Nicola Gough, Environmental Planning and Protection Network Manager, on 020 7929 9494 or email network.manager@rtpi.org.uk

Yours faithfully,

Matt Thomson
Acting Director Policy and Partnerships

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Question 1: What steps do you consider Defra/WAG should take to apply the waste hierarchy set out in Article 4(1) of the revised WFD as a priority order in waste management legislation?

Defra is responsible for constructing legislation to implement the directive with the present waste hierarchy requirement in Article 3 (1) of the 2006 Directive being applied to the plan-making functions of local authorities by paragraph 3 (1) (b) of the 2007 Environmental Permitting (E&W) Regulations (SI 2007/3538). The RTPI believe something similar would be required in this instance.

Question 2: Are there specific waste streams where you believe that departing from the waste hierarchy would be justified by life-cycle thinking on the overall impacts of the generation and management of such wastes, in order to deliver the best overall environmental outcome?

Consideration needs to be given to some of the higher calorific waste streams (wood, plastic, biomass etc.), whereupon life cycle assessment (LCA) and thinking may justify energy production as opposed to recycling. This needs to be considered in the light of both energy policy (incentives, need etc.) and market instability for recycle (i.e. so there are options available for diversion when markets fail).

Question 3: Are there any further steps stakeholders and members of the public would like Defra/WAG to take to ensure that the development of waste legislation and policy, to apply the waste hierarchy as a priority order, is a fully transparent process?

Since the hierarchy has been restated in the latest Directive, we believe that the central issue is the transposition into UK law and implementation of a seemingly decided package by the Commission, moreover only making relatively minor changes to well-established EU legislation.

If there are to be policy changes at national level (e.g. in Waste Strategy 2007 and planning policy for waste management (PPS10), then the usual consultation on any proposed revisions should clearly be as wide-ranging and effective as possible. It is however not clear that the new Directive will require or trigger revised national policy on planning matters as opposed to relatively minor changes in priority in waste management at the operational level.

With regard to the transposition of legislation required for this Directive (presumably further Regulations), full transparency for how government intends to draft and consult on new Regulations is required. More transparency is in principle desirable but as noted above, in legal terms legislative application appears in fact to be a mechanistic process of reference to the Directive.

Application of the waste hierarchy through the planning process is governed by planning law, and its general requirements for community engagement in the formulation of Development Plan Documents, openness in local authority decision-making, and the statutory provisions for plan examinations (and comparable provisions governing consideration of specific waste development applications). Presumably no waste-specific changes in general planning law are envisaged.

The area where further transparency might be beneficial is in the preparation of Municipal Waste Management Strategies (MWMS). The municipal waste stream has to be managed everywhere (in contrast to some more specialised waste streams). Work on MWMSs appears to be technical and can be driven by contracting considerations, including prior commitments in some cases. But these constraints can lead to outcomes in terms of the hierarchy which have not been fully debated, leaving the issues about the most appropriate management method to arise in the more open statutory planning process with its formal requirements for community engagement and consultation on Strategic Environmental Assessments, when it can be too late to re-open strategic choices (and maybe contracts) governing

management options.

Question 4: Are there any specific waste streams which you consider should be the subject of a producer responsibility regime under Article 8? If so, please explain what the economic and environmental costs and benefits of such regimes would be.

We believe that expansion of producer responsibility through more individual schemes may cause unnecessary burdens and confusion. Consideration needs to be given to how all product and waste streams can be managed most efficiently in terms of resources. It may be that resource allowances and tax incentives for all producers may be the way forward as this tackles the resource efficiency issue upstream, as opposed to targets set only when something become a waste. Allied to this a market place for waste would help to streamline the price and allocation of wastes for recycle, fuel, etc.

Question 5: Are there any further measures you consider it would be appropriate for Defra/WAG to take under the terms of Article 11(1) to promote the re-use of products or preparing for re-use activities? Please give reasons to support your answer.

Community recycling can be a marginal activity, but can also have huge social and environmental benefits. We suggest that this is recognised as being close to the top of the waste hierarchy and is also supported through Sustainable Community Strategies.

Question 6: Do you agree with the proposed approach to implementing the requirements of Article 11(1) on separate collections? Please provide reasons for your answer including, if possible, the costs and benefits of your preferred approach.

We agree with the proposal in principle; however we believe standards/thresholds will need to be set for recycle quality to facilitate harmonisation of collection and treatment systems.

Question 7: Do you consider that:-

**(a) There are any measures that are technically, environmentally and economically practicable and appropriate to take in England and Wales, on the separate collection of household, commercial or industrial waste to meet the necessary quality standards for the relevant recycling sectors? Please give reasons for your answer; and
(b) If yes, which measures do you think should be introduced to achieve this?**

Yes, but this would require a resolution of 6 above. Setting standards would create the market for collection and sorting equipment.

In answer to 7(b), it has been suggested by our members that (in their experience) whilst small businesses are largely aware of the desirability of recycling their wastes, they are discouraged by that fact small quantities tend to make it difficult and costly for them. To redress this, it has been suggested that "Bring Site" facilities be provided for commercial and industrial waste from small businesses, in addition to those for household waste.

Question 8: Do you consider that:-

**(a) It will be technically, environmentally and economically practicable to set up by 2015, in England and Wales, separate collection for paper, metal, plastic and glass which is classified as household, commercial or industrial waste: Please give reasons for your answer; and
(b) If yes, which measures do you think should be introduced to achieve this?**

Yes. The RTPI believes that this timeframe is practical given the imperative to reduce our carbon footprint. Additionally, through education and general awareness households and businesses are more likely to separate waste where municipal practices and management encourage behavioural change.

Question 9: Do you agree with the proposed approach to implementing the recycling target for household and similar waste required by Article 11(2)(a)? Please provide reasons for your answer including, if possible, the benefits or otherwise of your preferred approach.

In terms of treating similar waste streams and setting recycling targets, there are benefits of scale and harmonisation which should lead to more efficient infrastructure and reduce duplication of systems. Consideration would however have to be given between the current disparity in mechanisms for the collection and disposal of Municipal Solid Waste (MSW) and Commercial and Industrial (C& I) waste streams.

Question 10 (England only): Given the LAWRRD model scenarios above, do you agree with the Government's preferred "no further measures" approach? Please give reasons for your answer.

Not applicable.

Question 11 (England only): If you think the Government should look to introduce additional measures to ensure that the recycling target of 50% for household and similar wastes is reached by 2020, do you have views about what these additional measures should be? If so, please specify and give reasons for your answer.

Yes. Household recycling needs to be made easier and simpler for those people who are not self-motivated to separate waste, or who live in dwellings and residential layouts (e.g. small dwellings and flats) where storage of waste, domestic separation or recycle and movement to collection points, is difficult or impracticable.

Promotion of community-based recycling teams or groups might be one option, with rewards feeding back into local community projects. Considerations of design to support waste management are already set out as a policy requirement in PPS10 (paras. 35-36). The planning policy framework is there; the need is for practical action on the ground in relation to existing development, and in the design of new housing and other development generating municipal waste, to remove present obstacles to recycling. Most people are not highly-motivated environmentalists but will respond (or at least do more) if it's made easier for them.

Question 12 (England only): Do you have views about targeting any additional measures on specific materials? If so, please specify which materials you consider are high priority and give reasons for your answer.

Yes. A much more coherent approach to plastics recycling is required. This is a good example of the need to make things easier for people. Paper/card, glass and metal are now generally separated effectively in many, maybe most, household/kerbside systems. However, there is a variety of plastic packaging used in the home, with only some is collected; in some areas none are collected at kerbside, plastic bottles only at local Bring and Civic Amenity sites, and bulky rigid plastics at civic amenity sites. This leaves a large range of material marked as recyclable which fits in neither category.

The public can find these distinctions confusing, and, in most cases, the need to travel to collection sites for a limited range of material inconvenient. The question should be – does the UK recycle plastic or not? If it does, everything should be accepted, and suitable processing installed downstream. The planning implication is that plastics sorting facilities in general of plastics-dedicated MRFs will be needed. This requirement has to feed through more user-sensitive MWMSs into waste DPDs. If this proves too difficult, undifferentiated plastic should be incinerated in plant with

EfW/CHP capability. Plastic is a potential fuel and could displace some of the fossil fuels we will inevitably have to continue to burn for a considerable time. At present too much plastic is still going into the general household/business waste stream, to various destinations, often including landfill.

Question 13 (Wales only): Do you think that Wales' approach will meet the requirements of Article 11(2) (a) of the revised WFD? Please give reasons for your answer.

The Wales' approach includes an emphasis on the recycling of food waste. However, the consultation document also refers to the fact that the Government is in communication with the European Commission to whether anaerobic digestion can be classified as recycling (paragraph 2.13). There is concern that if the European Commission does not agree with this position, then the Wales' approach may fall short of the targets.

If anaerobic digestion is deemed to be acceptable as a form of recycling, then there needs to be action to ensure the planning system is able to respond to the need for these specialist facilities. A number of proposals for waste facilities in Wales are currently struggling to be approved, despite officer support, because of the public perception of these facilities and the link which is made with former incineration facilities.

Question 14: Do you agree with our assessment of the extent to which we are already meeting this construction and demolition waste recovery target in England and Wales?

For many years there has been concern in some sectors of the Planning profession about the unregulated nature of "exempt sites" such as farm roads, hardstandings, golf courses, "landscaping mounds" etc. It seems that a substantial volume of construction and demolition waste, not all of which is inert, have been going to such sites, and this has contributed to the inadequacy of records. Originally it was assumed that activities such as creation of farm roads or landscaping mounds would involve re-use or re-cycling of waste hardcore that otherwise would be landfilled, but practical experience shows that some sites have been used for the emplacement of a variety of unsorted wastes.

The last national-scale survey was carried out in the early 2000s by DCLG (note not Defra, and produced primarily to underpin work on the management of aggregates supply). While there was reasonable confidence in the data at national level, there were questions about the reliability of data at regional and sub-regional levels. A new Defra-sponsored survey is required. In carrying one out, it would be essential to work with the grain of a widely dispersed industry that is not naturally good at accurate record-keeping. These actions could well be vulnerable to the forthcoming programme of severe public expenditure reduction and restraint, but without it as time goes by the UK's position in relation to the CDEW recovery target will become increasingly unclear.

If it is too expensive for the public sector to initiate a Defra sponsored survey, or even if it is not, it would be useful for government to require operators of exempt sites to keep records, as has been done with quarry operators. This would require monitoring to ensure that operators comply and provide accurate information. It has also been suggested by members that, just as government has introduced fees for planning authorities to finance monitoring of planning permissions for mineral working and landfill, why not require similar fees to be paid by operators of waste sites which are exempt from licencing, to ensure that the Environment Agency has adequate resources to monitor them? (recording both their site records and their site operations, or what they actually emplace on site). The operation of such sites must provide those involved with financial benefit, otherwise they would not exist, so it does not seem unreasonable to propose that they should contribute resources in this way.

Question 15: Do you believe that any additional policy or legislative measures are necessary for us to guarantee that we are meeting this target in England and Wales?

The importance of recycling construction, demolition and excavation waste (CDEW) and other mineral material is clearly set out as national policy throughout MPS1 in England and this should filter through to minerals/waste policies in DPDs. As in so many other aspects of waste management, it is not further top-down policy prescription that is now needed but hard work on the ground to change behaviour. Site waste management plans were a good start, but one only has to look at the careless mixing and contamination of construction and demolition waste on site to see where changed behaviour and practices could yield more recyclable material.

We believe a new, well-designed survey as noted under Q15 is the first step. Our members have also suggested maintenance of the Aggregates Levy, with its exemption for CDEW used as aggregate and better enforcement of “exempt” sites and implementation of site waste management plans to ensure well-run aggregate recycling plants.

Question 16: Do you agree that the UK is currently self-sufficient in installations for the recovery of mixed municipal waste from private households etc? If not, please (i) explain your reasons and (ii) the steps you consider need to be taken by the UK to achieve self-sufficiency in relation to such installations.

There appears to be capacity for handling waste, but not for treating, reprocessing etc. We believe there is a need to invest in new technologies to provide greater capacity to meet landfill diversion targets and quality standards (as mentioned above). This is a complex issue because of the amount of material that is exported for reprocessing; however it is notable that many countries are now imposing their own standards for acceptance of recycle.

Questions 17 & 18:

No comment.

Question 19: Do you agree that sufficient measures are already being taken in England and Wales to encourage bio-waste treatment etc as envisaged in Article 22? If not, please (i) explain your reasons and (ii) the measures you consider need to be taken in England and Wales to encourage bio-waste treatment etc as envisaged in Article 22?

We suggest that the managing of bio-waste should include all options for recovery (i.e. land recovery, anaerobic digestion (AD), compost, fuel). Harmonisation of carbon costs and incentives would also help.

Question 20: What revisions do you consider Defra/WAG should make to the existing arrangements for waste management plans (see paragraph 2.134 above) to transpose the requirements of Articles 28(1), (2) and (3)(a)-(e) of the revised WFD? Please give reasons for your answer.

We believe this is the core question in this consultation paper for spatial planning with regard to waste management in the UK.

There is ongoing confusion surrounding the use of terms such as “waste planning” and “waste management plans”, including those used in this consultation document. These can sometimes mean land use and/or spatial planning as practised by waste planning authorities, but in other contexts can mean operational waste forecasting and planning by disposal and collection authorities.

The generalised references to “Waste Management Plans” are ambiguous since in paragraph 100 of Annex 3 (page 95 of the consultation document) it means spatial plans and in paragraph 101 it means operational waste plans. Awareness of the different types of local planning for waste management is apparent in paragraph 97 (same page) and it would make it clearer if this was carried over into the whole document.

With regard to spatial planning for waste management, paragraph 2.134 of the consultation document points to the longstanding transposition requirement in the Waste Management Licensing Regulations 1994. Paragraph 7 of Schedule 4 of those Regulations applies to development plans the requirement to include “policies in respect of suitable waste sites and installations”. There does not appear to be any need to change this mechanism for implementing Directive requirements for identification of sites for waste management in development plans and policies. Though the extent to which discretion in plan-making in this respect has long been captured by EU legislation does not appear to be widely known and understood by waste planning authorities, the requirement to provide for sites in DPDs is clearly set out in paragraph 17 & 18 of PPS10 and should be known and accepted.

The real difficulty in this area is in implementing the requirement, in respect of a form of development (i.e. waste management facilities of any kind) that authorities often find locally contentious and politically difficult. The successful litigation against Surrey County Council over the proposal in its Waste Core Strategy for an incinerator near Capel highlights this issue. Hence the comment by the Planning Inspectorate in its September 2009 update of “Examining Development Plan Documents – Learning from Experience” that “*a number of the waste plans that have been withdrawn [from the examination process] have failed to give sufficient geographical direction for subsequent site allocation DPDs and to enable planning applications to be determined on a plan led basis*”. Despite an express recognition of the Directive requirement in paragraph 50 of its document which should have been picked up by all authorities in view of PPS10, even if they were not aware of the requirement in the 1994 Regulations. The Inspectorate’s report highlights:

- No explicit criteria for site allocations in Core Strategies
- Weak justifications for site allocations and areas of search
- Very extensive (i.e. meaningless) areas of search.

The Inspectorate concludes by noting that further guidance on the preparation of waste plans will shortly be placed on the web-based PAS Plan Making Manual.

The issues around political ownership and local commitment to unpopular choices about local site allocations is further complicated by the shadow of uncertainty (and hope of political change in some cases) cast by the need for a General Election in 2010. Meanwhile, on page 94 of the consultation document (paragraph 74 of Annex 3 on Costs and Benefits) it is stated that Directive-compliant waste plans that conform to the proximity principle (i.e. by allocating sites) must be completed by July 2010. The origin of this very specific requirement (stated by Defra, not CLG which is responsible for national planning policy including on waste) is unclear. Subsequently, this requirement will be unlikely to be delivered by a substantial number of waste planning authorities (maybe as many as $\frac{2}{3}$ authorities in England) within this timeframe.

In conclusion, we believe that the effective implementation of the long-standing Directive requirement for site or criteria-specific waste plans that Defra and CLG effort needs to be concentrated, rather than the legal mechanics of transposition (which don’t appear to be defective). This is an enormously difficult area for authorities, and they need understanding and positive support.

Question 21: Which, if any, of the discretionary issues set out in Articles 28(4)(a)-(d) of the revised WFD do you consider Defra/WAG should address in the arrangements for waste management plans adopted in response to Question 20? Please give reasons for your answer.

This question well illustrates the need for care in distinguishing between spatial and other types of plans in considering waste management. Article 28 (4) is not primarily about spatial planning for waste management, but confusion arises with the term “waste management plans”, because how it is interpreted and applied in the UK is not defined. Subject to that:

- 28 (4) (a) - clarification of responsibilities would be useful not only between the public and private sectors but also within the public sector e.g. between waste planning authorities, waste management authorities and the Environment Agency. For example, waste prevention programmes should not be left by default to waste planning authorities concerned with development through a failure to define what exactly is meant in the UK by the Directive term “waste management plans”. Spatial planning for waste supports the delivery of effective waste management but does not drive it. This is indirectly recognised in paragraph 111 of Annex 3 of the consultation document but this should be made clearer throughout.
- 28 (4) (b) Evaluation of the effectiveness of economic instruments is a Defra requirement. With regard to spatial planning, they do appear in general as an effective driver towards reduced reliance on landfill, more development of facilities to support activity further up the waste hierarchy, and increased recycling of CDEW as aggregate.
- 28 (4) (c) Awareness campaigns for the public and communities are clearly essential for improved waste recycling performance (see above on plastics). They are also needed to build local support for additional local waste management facilities, given the difficulties local authorities are facing in identifying acceptable new sites.
- 28 (4) (d) Work on evaluating historic contaminated waste sites and their rehabilitation is primarily for the Environment Agency to lead on, though some aspects of remediation might involve development requiring planning permission (e.g. if material is moved off-site and re-deposited, or if new treatment plant is required). While remediation is in principle desirable, action should be proportionate to the assessed present and future hazards to health and the environment. It should not be forgotten that disturbing old sites may itself have adverse effects on subsequent nearby development and newly created habitats, and this should be approached with caution.

Question 22: What are your views on the merits of either (i) freestanding national waste prevention programmes in England and Wales or (ii) a more dispersed approach which would involve introducing a requirement for local authorities to draw up their own waste prevention programmes? Please give reasons for your answer.

There is a false dichotomy in this question. A national waste prevention programme can only be delivered by countless acts locally, which will require involvement by local authorities. Before embarking on this there must be clarity surrounding where responsibility rests in local authorities, and this will probably require the creation of a statutory duty (and the allocation of necessary resources) if this is not to be regarded as an unsupportable luxury in a time of severe expenditure restraint. However, benefit in Wales has been seen from having Waste Awareness Wales which works to ensure consistency across local areas and to assist local authorities. As far as spatial planning is concerned, at present waste prevention is not a statutory planning function, nor does it appear of itself to be a planning activity in the sense that it regulates the development of land. (Planning might be involved in a supportive role through the provision of facilities, but that is a secondary function).

Question 23: What are your views on the integration of waste prevention programmes into the waste management plans required by Article 28 of the revised WFD, their integration into other environmental policy programmes or their functioning as separate programmes?

Our comments at the start of Q 21 and on Q22 are relevant in this instance. Firstly, the RTPI strongly believe that it is essential be clear about what exactly is meant by a “waste management plan”, where in a local authority (or elsewhere) the responsibility should rest, and how it is to be resourced (including staffing). This activity does not appear to be one that should form part of the statutory process of preparing spatial plans for waste management facilities. Paragraph 111 of Annex 3 of the consultation document appears to accept this would be an activity for collection authorities

(districts/unitaries) and not planning authorities (counties/unitaries). That seems a more logical allocation, and could usefully be made explicit in the main policy narrative of the Stage 2 Consultation.

Question 24: Member States must evaluate the usefulness of – but not necessarily adopt - the 16 examples of waste prevention measures in Annex IV to the revised WFD. Do you have views on the usefulness of any of these examples as waste prevention measures? If so, please specify the measures and give reasons for your answer.

Waste prevention measures need to be considered in the light of behavioural change across the life of a product/material and in terms of resource efficiency to be effective. Where responsibility for this is placed is important, it should not be subject to credits or allowances that exist merely to perpetuate recycling.

Question 25: Do you consider that the costs and benefits of the transposition and implementation of the provisions of the revised WFD that are the subject to the Stage One consultation exercise have been accurately assessed in the initial Impact Assessment at Annex 3 (page 71) to the consultation paper? If not, please provide whatever evidence you can to enable a more accurate assessment to be made in the Impact Assessment that will form part of the Stage Two consultation exercise.

Our overall impression is that the cost/benefit estimates are optimistic. The problem is that the up-front public expenditure costs are explicit whereas the benefits are imputed and less tangible. To take one example, with the waste prevention programmes there is an estimate of £250,000 per collection authority to prepare a Strategic Environmental Assessment, but there is no estimate of the costs of putting a programme in place (staffing, preparation, publicity, other front line action, maybe investment in facilities, evaluation). With regard to spatial planning, while the additional costs of evaluating and putting into plans site specific proposals would offset the present (very real) costs now being incurred through plans being withdrawn because they risk being found unsound, or have been found unsound, facing up to difficult site allocations will attract more litigation which will have to be defended. Even successful defences will impose some costs on authorities – unsuccessful ones impose very heavy costs.

Overall, the cost evaluation appears optimistic, and in common with much of the consultation document seems to be written from a central, theoretical, position rather than from practical experience.