



"Working for our members to be the voice of government on waste minimisation and recycling issues"

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ADVISORY COMMITTEE

Alison Simms
Department of the Environment
Climate and Waste Division
6th Floor, Goodwood House
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BELFAST
BT1 4NN

15 November 2010

Dear Mrs Simms

**Consultation Response – Stage 2 Consultation on the
Transposition of the revised Waste Framework Directive
(Directive 2008/98/EC)**

I am writing to present the LARAC response to the DOENI Consultation on the Transposition of the revised Waste Framework Directive (Directive 2008/98/EC), which is contained below, and I thank you for the opportunity to respond to the above consultation.

The comments below are sent on behalf of the Local Authority Recycling Advisory Committee (LARAC), in liaison with the Northern Ireland Local Government Association (NILGA) Waste Working Group and the Northern Ireland Technical Advisors Group (TAG).

LARAC is an association of nearly 90% of the 440 local authorities across England, Scotland Wales and Northern Ireland whose waste management and recycling professionals' co-ordinate and operate waste management services. Membership is drawn from all types of authority including statutory Waste Collection (WCA), Waste Disposal (WDA) and Unitary.

Overall LARAC supports the proposals set out within the consultation, subject to a number of caveats. In particular, LARAC members are concerned that the costs of complying with Articles 4, 11 and 28 do not take into consideration the financial burden of communications, monitoring and enforcement and as such may be underestimated, and that in taking a minimalist approach an opportunity to increase Producer Responsibility and subsequently reduce and/or divert more waste from landfill may have been missed.

Overleaf are our detailed comments as requested in the consultation.



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If you have any queries on this response or would like to discuss the matter further then please do not hesitate to contact me on 028 37529624 or larac@armagh.gov.uk

Yours faithfully,

Ms Liz Drew
Policy Support Officer, LARAC Policy Team

cc. Mark McAdoo, Cookstown District Council/ LARAC Representative NI



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Consultation Response – DOE NI Stage 2 Consultation on the Transposition of the revised Waste Framework Directive (Directive 2008/98/EC)

The Transposing Regulations

Question 1: Do you agree that the draft transposing Regulations Chapter 3 of the paper fully and correctly transpose the requirements of the rWFD?

If not, please identify the specific requirement of the rWFD and give reasons to support your view that it is not fully and correctly transposed in the draft Regulations.

Subject to our comments below, LARAC members agree that the draft regulations fully and correctly transpose the minimum requirements of the rWFD (Directive 2008/98/EC).

LARAC members are generally supportive of the approach adopted with regard to the requirement to meet the 50% recycling target, but would however welcome further clarification of the terminology surrounding "household waste" .

Whilst this issue is highlighted in Chapter 2, 2.121 of the consultation document, members feel that there would be a significant difference in total tonnage/waste arising from "waste from households" as opposed to "household waste" which also includes waste from schools, hospitals and universities. Furthermore, if waste ".....possibly from other origins as far as these waste streams are similar to waste from households" (Article 11(2)(a); Chapter 2, 2.114) was deemed to also include commercial and industrial waste collected by district councils, this effectively would be a municipal waste recycling target.

LARAC members feel that these terms remain potentially confusing, and we do welcome further guidance and clarification on the definition of household and municipal waste.

Question 2: Do you consider that any of the provisions in the draft Regulations Chapter 3 of the paper do more than is necessary to transpose the requirements of the rWFD (eg gold-plate)?

If so, please identify the provision in the draft Regulations, and the requirement of the rWFD, and give reasons to support your view that the provision does more than is necessary to transpose requirement.

We do not feel that any of the provisions in the draft Regulations (Chapter 3) do more than is necessary to transpose the requirements of the rWFD.



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In relation to Schedule 3, Regulation 6 (g), members support identification of the treatment method used for each type of operation as a means of further ensuring application of the Waste Hierarchy.

With particular regard to Article 8 of the rWFD (Extended Producer Responsibility), LARAC members feel that in opting for such a minimalist approach an opportunity to design out waste and further increase waste management at the top end of the waste hierarchy may have been missed.

As detailed in our response to the Departments` earlier consultation on the introduction of restrictions on the landfilling of certain wastes, we would definitely have liked to see greater focus on producer responsibility for packaging, and would similarly welcome the strengthening of producer responsibility requirements for materials such as paint and tyres.

LARAC members do acknowledge that the short remaining time scale for transposing the rWFD may preclude taking forward any additional Producer Responsibility schemes under Article 8 at this time, but again feel that to not do so is an opportunity wasted.

Article 4: The Waste Hierarchy (Chapter 2 paragraphs 2.16-2.27)
Stage 1 - The right waste facilities in the right places: Waste Hierarchy and planning

Question 3: Do you agree with the proposal to give effect to the Waste Hierarchy (a) by updating the WMS (b) by updating PPS11 and (c) through spatial planning? If not, please give reasons to support your answer.

As key vehicles for ensuring that the 5-step Waste Hierarchy is taken into account, LARAC members welcome the Departments` proposal to update both the Waste Management Strategy and PPS11, "Planning and Waste Management", in order to meet the requirements of Article 4 of the rWFD. Members also support application of the Waste Hierarchy through spatial planning as detailed in Chapter 2 of the consultation document, although feel the Impact Assessment may have under-estimated the cost implications of this to the regional waste groupings.

Application of the Waste Hierarchy will result in considerably more materials being diverted from landfill, thus the need for adequate infrastructure, processing capacity, and "resources-based" industries across the province is paramount.

LARAC members consider it vital that the right frameworks are in place to ensure timely delivery of the required infrastructure. The waste management plans are critical in providing clarity for investment decisions in waste facilities, and PPS11 the means of the required infrastructure becoming a reality. LARAC



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members look forward to the opportunity to respond to the forthcoming consultation on updating PPS11.

With regard to the application of the Waste Hierarchy to all individual planning applications (Chapter 2, paragraph 2.26), LARAC members would agree that such an option could result in very significant costs for applicants and planners. However, members would suggest that an alternative to this is to incorporate best practice, as exemplified in the recently published Northern Ireland Waste Storage Guide, into the planning application and consent process.

Stage 2 – Waste facilities operating in the right way: the waste hierarchy and permitting

Question 4: Do you agree with the proposals in respect of each of the categories of permits/exemptions described at (a) to (c) above (Chapter 2, paragraphs 2.31-2.33)?

Are the assumptions made about costs reasonable (please see the accompanying Impact Assessment for more details). Please give reasons or alternative data to support your answer.

LARAC members support the requirement for permit/license holders to take appropriate measures to minimise waste generated by their operations, and where waste is generated, to treat it in accordance with the Waste Hierarchy.

We agree this requirement should not be introduced retrospectively, but with some existing permits/licences due to run for several years, members would welcome an identified time frame by which organizations should comply with Article 4 requirements, rather than simply waiting for the due review, modification or transfer date.

Members note that the costs indicated in paragraph 2.33, and Table 2 of the Impact Assessment, do not include a figure for education/communication of Article 4 requirements other than for reading the guidance documents, or for on-going compliance monitoring/enforcement. We feel that some clarification of how compliance will be measured is needed; for example, will periodic inspection (as per Article 13, Schedule 3 of the Draft Regulations), be the sole form of monitoring, or will the production of a waste management plan be taken as evidence that an organisation has applied the waste hierarchy to all its activities?

Stage 3 - Managing waste as high as possible up the hierarchy: the role of waste producers and holders

Question 5: Do you agree with the proposal to give effect to the waste hierarchy, and Article 15(1) of the rWFD, by adding a declaration to the



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duty of care waste transfer note, so that waste holders and producers etc. are required make a short standard declaration on the transfer note certifying they have taken the Waste Hierarchy into account in minimising waste and in their decision about the treatment which the waste is being consigned to, having had regard to the guidance for Northern Ireland? (NOTE: The requirement will not apply to householders and household waste produced on their property.)

Are the assumptions made about costs reasonable (please see the accompanying Impact Assessment for more details)? Please give reasons or alternative data to support your answer.

In general, LARAC members support the Departments` preferred Option (b) requiring waste holders and producers etc. to make a short standard declaration on the transfer note certifying they have taken the Waste Hierarchy into account in minimising waste and in their decision about the treatment which the waste is being consigned to. We do not feel that adding a narrative, as proposed in Option (a) would add any greater guarantee of compliance.

However, LARAC members are unsure as to whether the indicative costs outlined in paragraph 31 of the Impact Assessment include the full costs of both introducing the change, and monitoring and enforcing compliance in the future, and as such feel that they may have been seriously underestimated.

In order to prevent the introduction of the short standard declaration of commitment becoming merely a "tick box" exercise, members feel that a credible and robust method of monitoring both Duty of Care awareness and compliance must be in place. As stated, in costing the proposed introduction of the added declaration, it is unclear whether the full financial implications of communicating, educating, monitoring and enforcing the change have been fully considered.

The Waste Hierarchy Guidance (Chapter 2)

Question 6: Do you agree with the legislative proposals underpinning the guidance in Northern Ireland on the application of the Waste Hierarchy?

Yes.

Question 7: What are your views on the draft guidance on the application of the Waste Hierarchy in Chapter 4 of this consultation paper? In particular, what are your views on:-

- **whether it covers the right waste streams;**
- **whether and how it could be made easier to read and use;**



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- **the substance of the guidance; and the way Section 2 of Part 2 (*Switching to better options: ideas and sources of support*) is organised. Would users prefer to have it laid out by material (so it goes through the steps of the hierarchy for each material in turn), or the way it is now, which is designed to allow users to look at the same activity for several materials at a time?**

LARAC members feel that the draft guidance does cover the right waste streams, although would also welcome the inclusion of batteries.

With regard to particular waste streams:

- Garden wastes: LARAC members would suggest that composting should be given a higher status in the hierarchy where (woody) materials are suitable for composting and less suitable for Anaerobic Digestion (AD), particularly as there are currently no dry AD plants in operation in Northern Ireland.
- Plastics: LARAC generally agrees with preferred Option One as it allows for further development of the recycling market for mixed plastics and greater consideration of the relative costs and benefits. We welcome further guidance on what is considered "technically, environmentally and economically practicable" in the light of further information, but would urge caution in pursuing a "lowest cost" route to transposition, at the risk of neglecting the wider economic, environmental and societal benefits of plastics recycling in all its manifestations.
- Residual "black bag" waste: LARAC members would welcome clarification as to whether the recycling of glass, plastics and metals etc (through so called "dirty MRFs") would enable these materials to count toward recycling targets and look forward to the results of the final checks referred to in Section 3.11 of the draft guidance (page 148).
- Members would also welcome clarification on how the definition of recycling in Schedule 3 (1)(c) of the draft regulations will impact on dirty MRF operations currently producing Refuse Derived Fuel, and whether this is an area that will be considered in the proposed Defra work on classification of the outputs of various reprocessing techniques (Chapter 2, 2.130-2.131)?
- Finally, LARAC members welcome the work being undertaken to scope out the preparing for reuse sector and how it can supplement Northern Ireland's current recycling performance (Chapter 2, 2.26), and look forward to the results of this exercise.

LARAC members found the draft guidance to be useful, but felt the layout/objectives unclear at times. For example, in Section 1.4, we felt that a third column linking questions to the relevant section of the document could make navigating the guide much easier. Similarly, by adding a Waste Hierarchy diagram at the end of each Section 3.1 -3.10 that



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highlights examples of the means of managing that waste at each stage, the guide would further reinforce the introduction given in Section 2.1, and Figure 1.

Article 11 (i): Separate collection of paper, metal, plastic and glass by 2015 (Chap 2)

Question 8: Do you believe that:

- (a) Offences at the levels proposed are appropriate in relation to the provisions on the separate collection of commercial and industrial waste; or**
- (b) Would prefer to see the separate collection requirement implemented as a condition in the waste carrier registration and permitting regimes?**

As per Option (b), LARAC members would prefer to see the separate collection requirement implemented as a condition in the waste carrier registration and permitting regimes. Members feel the penalty of licence revocation to be a potentially greater motivator than civil sanctions in driving forward the separate collection of key commercial and industrial wastes.

Members have concerns that without such penalties the system could be open to misuse, with commercial/industrial organisations citing separate collections impracticable on economic/technical grounds, for example. This also applies generally to wide application of the "technically, environmentally and economically practicable" provisions in the rWFD.

We would also welcome greater clarity regarding regulation, for example as to who the regulator would be, and what resources would be available for this purpose.

LARAC members do have some general queries/comments regarding the interpretation of separate collection:

- What criteria will be used to ascertain that co-mingled collections, followed by their subsequent separation, assure "the necessary quality standards are met and that high quality recycling is promoted" (Chapter 2, 2.91), and will these be linked to the Publicly Available Specifications (PAS) outlined in Annex E of the draft guidance?
- The European Waste Catalogue does not differentiate between paper and cardboard (EWC codes 15-01-01 and 20-01-01). Are members therefore to assume that cardboard is included in the separate collection requirement with paper?



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- Chapter 2, 2.105 of the consultation document acknowledges that "it will (also) be necessary to consider what is an adequate provision of bring banks for an area should a district council be relying on this means to collect one or more of the four materials in part, or all, of its area". Members would welcome clarification as to whether these same bring banks will meet the similar separate collection requirement for commercial and industrial waste?
- LARAC members welcome the Departments recognition that it is a matter for the councils and waste management groups to make decisions on the most appropriate form of collection, but would query why the Department has indicated that single stream co-mingled collections may only be appropriate in circumstances where other options are impracticable, for example in the densest urban areas? (Chapter 2, 2.95)

Article 26: Registration (Chap 2)

Question 9: Do you agree with the proposals for a two-tier simple system as the least burdensome method of meeting the terms of the ECJ judgement?

LARAC members support the proposals for a simple two-tier simple system as the least burdensome method of meeting the terms of the ECJ judgement. However, members are unclear as to where Local Authorities (currently exempt) fit into the proposed revised system, and feel clarification is required prior to transposition.

The Impact Assessment (Chap 2)

Question 10: Do you consider that the costs and benefits of the transposition and implementation of the provisions of the revised Waste Framework Directive that are addressed in the Impact Assessment have been accurately assessed?

If not, please provide whatever evidence you can to enable a more accurate assessment to be made in the Impact Assessment that will accompany the post-consultation draft of the transposing regulations that is laid before the NI Assembly Committee.

As stated in our response to questions 3, 4 and 5 above, LARAC members feel that the full costs of transposition may have been underestimated.

The costs identified in the Impact Assessment appear to be largely for administration; monitoring/enforcement and on-going education/communication costs do not appear to have been considered. Similarly, no mention has been made of the cost of continuing waste composition/arising analysis – for



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commercial and industrial, and construction and demolition wastes as well as household. If possible, LARAC members would welcome clarification of what money has been allocated for this.

Finally, the cost to public sector waste producers/holders does not seem to have been factored into the estimated costs of applying the waste hierarchy via the Waste Transfer Note declaration. This again may result in the true costs being underestimated.