



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

LOCAL AUTHORITY RECYCLING
ADVISORY COMMITTEE

Zero Waste Delivery Team
Scottish Government
Area 1-H
Victoria Quay
EDINBURGH
EH6 6QQ

8 February 2011

Dear Sir/Madam,

Consultation Response - Scottish Government Consultation on the Proposed Zero Waste (Scotland) Regulations 2011

I am writing to present the LARAC response to the above consultation, which is contained below, and I thank you for the opportunity to respond.

The responses below are sent on behalf of the Local Authority Recycling Advisory Committee (LARAC). LARAC is an association of around 380 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.

Our response has been peer reviewed by members of LARAC's policy team and executive committee. LARAC members have also been invited to comment on the consultation through the members' discussion forum on our website. All contributions received have been taken into account in drafting the response below.

Overall, LARAC members wholeheartedly support the central determination of the Zero Waste Plan to achieve the best overall outcomes for Scotland's economy and environment by making best practical use of the waste hierarchy as defined in Article 4 of Directive EC/2008/98, and by taking a resources-based approach to managing wastes from all sectors.

Members agree that successful implementation of Scotland's Zero Waste Plan will help Scotland to achieve sustainable economic growth, with, for example, recycling delivering a sustainable supply of raw materials whilst simultaneously reducing dependence on imports. Already many local authorities, public sector organisations, business and individuals have begun to view waste as a resource, change attitudes and practices regarding wastes, and LARAC welcomes a regulatory framework that will enable such leadership and achievements to be replicated across Scotland, although feel that further clarification is required on a number of key issues.



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Overleaf are our detailed comments as requested in the consultation.

If you have any queries on this response, or would like to discuss the matter further then please contact me on 028 37529624 or e-mail: larac@armagh.gov.uk

Yours faithfully,

Ms Liz Drew
Policy Support Officer, LARAC Policy Team

cc. Mr Stratton MacDonald, LARAC Representative, Scotland



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Q1. Are there any other materials or waste streams which should be included in these requirements to sort and separately collect?

No.

LARAC members agree that clean, uncontaminated recyclable materials command higher prices in the recycling markets, and do broadly support the requirement to sort and separately collect the key waste streams identified in Sections 2.2, 5 and 6 of the consultation document. However members do have some concerns regarding the impact of this requirement on local authorities, and would welcome clarification of the following:

1. Whether "co-mingling" of household dry recyclable materials will meet the proposed regulatory requirements?

Currently many local authorities provide a co-mingled dry recyclable kerbside collection to all householders. Whilst the consultation document clearly states that co-mingling of non-household dry recyclate will be deemed satisfactory under the proposed new Duty of Care requirements, it is not wholly clear from the proposed changes to Section 45C of the Environmental Protection Act 1990, whether co-mingled collections from households will also continue to meet the proposed regulatory requirements.

LARAC members feel that if co-mingling is allowed to continue, this would have limited service/cost implications for local authorities, and residents. However, a move to mandatory source segregation of household dry recyclate would have major cost and infrastructure implications to local authorities currently operating co-mingled schemes, not least the need for new collection vehicles, collection regimes and containers, communications campaigns, and outlets for the materials. Such a move could also severely impact on the storage capacity of many residential properties.

With particular regard to textiles, members do feel that consideration should be given to allowing Local Authorities discretion regarding whether to provide kerbside source separation or to continue with existing bring banks collection schemes. The many textile bring banks in existence currently appear to provide largely high quality textiles for re-use and recycling, and are well recognised by the public.

LARAC would welcome prompt clarification on this issue, as well as on what criteria will be used to ascertain that local authorities have taken all "technically, environmentally and economically practicable" measures to



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provide separate collection services to households for the listed recyclable materials".

2. Whether offering a range of Bring Bank facilities will meet the proposed regulatory requirements?

Placing a mandatory requirement on all waste producers (other than households) to separately collect the proposed range of dry recyclable materials has the potential to considerably increase the demand for local authority trade waste recycling services. If the cost of these services isn't fully passed on to trade customers, this could add a considerable cost and infrastructure burden to councils already facing budgetary cuts and departmental down-sizing.

Members would welcome clarification as to whether Bring banks will meet the similar separate collection requirement for commercial and industrial waste?

3. With regard to Sections 6.4 and 7 of the consultation document, LARAC members agree that once collected all waste should be dealt with in the same way regardless of whether it is household, commercial, industrial or municipal. Members support the inclusion of the waste management license condition proposed in Regulation 3, 12E (2) of the draft Zero Waste (Scotland) Regulations 2011. However, members would welcome clarification of the date on which this will become a mandatory requirement.

Members feel that the 2013 timescale for full implementation of separate collection is very challenging and may be unachievable, particularly given the lack of a delivery plan. Whilst mature markets exist for the materials that are to be collected separately, the following are a concern:

- a. Potentially limited MRF capacity to process large additional volumes of co-mingled dry recyclates.
- b. The capacity of waste management companies, and councils to roll out new storage and collection services to all customers and householders by the deadline.
- c. Again, if local authorities currently offering a co-mingled collection for recyclable materials are required to move to source segregated collections they will be required to also change the vehicles used, and thus may potentially face difficulty in meeting this new license requirement depending on how soon the requirement comes into force.

LARAC members would also welcome further clarification of how these conditions will be monitored and enforced, and what resources will be made available for the education of all relevant stakeholders.



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Overall, LARAC members look forward to prompt publication of the proposed Best Practice Guidance for collection systems referred to in Section 6.1 of the consultation document. Members would welcome guidance that provides some opportunity for local design of collection systems based on local property, geographical and socio-economic make up. A document that proposes only one collection method as "best practice" will not be of practical use for Local Authority decision makers dealing with areas that are not suitable for a "one size fits all" approach.

With regards to materials such as Waste Electronic and Electrical Equipment (WEEE) or household batteries, members feel that where existing producer responsibility regulation exists this should be used as the primary means of regulation. Members feel that if the Scottish Government does not feel that all recoverable WEEE/batteries are being captured, then the Producer Responsibility regulations should be amended rather than bringing an additional, 'end-of-pipe' duty on waste managers to extract WEEE/batteries at their cost. It is for this reason that the LARAC members do not propose that WEEE/batteries be considered as a potential additional stream for segregated collection or extracted from mixed, unsorted waste.

LARAC members do not propose that any other streams should be considered through Regulation at this time. It is possible that technical, environmental and economically practicable opportunities may arise to separate more materials in time, and given the scale of the challenge faced by Scotland to achieve the 2020 targets, we feel this driver is more likely to stimulate innovation resulting in the introduction of means to manage these opportunities rather than additional regulation.

Q2. Food waste is required to be presented in a dedicated container. Are there any other recyclable materials which should be sorted and presented separately for collection in a dedicated container?

With regard to separate food waste collections, and the proposed regulatory requirement to

"present...food waste for collection separately from all other wastes"
(p31 Environmental Protection Act 1990)

LARAC members do have some concerns regarding whether co-mingled collection of food and garden wastes will be permissible under the proposed regulatory framework, and if not, what support and infrastructure will be made available to councils to move to a dedicated food waste collection service for both household and trade customers prior to 2013?

Currently a number of councils collect food wastes co-mingled with garden wastes in wheeled bins as they have found that this is the most efficient and cost-effective means of providing a biowaste recycling service in their area. Should completely separate collections of food wastes become mandatory in 2013, this will again require significant



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additional resources in the form of additional collection containers, vehicles, collection regimes, communications campaigns, and the necessary outlets/infrastructure for processing food wastes, i.e access to Anaerobic Digestion facilities. Adding the extra collection regimes would also have the potential to significantly increase carbon emissions relative to co-mingled collection of food and garden wastes.

Members have concerns regarding both the cost and service implications of the above, and whether access to suitable processing facilities will be available across Scotland in time for the 2013 introduction of the separate collection requirement. LARAC members would also suggest that the term "food waste" is substituted with "bio-waste", as defined in the Waste Framework Directive, throughout the regulations, thereby allowing Waste Managers to adopt the optimum collection and treatment system for their area based on available infrastructure and markets.

We do welcome further guidance on these issues, alongside clarification of what financial resources have been allocated to support the changes required to meet the regulatory requirements.

Q3. Do consultees have any comments on the new draft Duty of Care Code of Practice?

LARAC supports the proposed extended Duty of Care on all waste producers (other than households), however we would welcome further clarification from the Scottish Government on the following prior to introduction of the proposed Zero Waste (Scotland) Regulations 2011:

1. Members would welcome clarification of the type(s) of plastics referred to in Regulation 2(3)© - the requirement to separately collect plastics. Does the requirement relate to plastic bottles alone, or plastic bottles and other plastics such as rigid plastic tubs and pots and plastic film? Currently only limited outlets exist for the recycling of a wide range of plastics, and members have some concerns regarding the practical and financial implications of any requirement for councils to provide separate collections for all plastics; also, such a requirement may not be technically, economically or environmentally feasible across all areas within the time frame given.
2. As for Q2., above, LARAC members have concerns regarding the cost and infrastructure implications to local authorities resulting from Regulation 2(2B) and Section 5.5 of the consultation document – the requirement to separately collect food wastes. Any increased demand for food waste collections from local trade customers could have significant cost and infrastructure implications for local authorities, not least in putting in place, or having access to, the required treatment facilities in time for the introduction of the new requirements.



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3. Again, LARAC members have concerns regarding the cost and infrastructure implications for local authorities if private waste management companies choose to only collect the most profitable of the key recyclables leaving Local Authorities to collect the least economically viable materials from the majority of businesses, as well as from all households. In the current economic climate Local Authorities with limited available resources may experience difficulty in, for example, purchasing the necessary additional vehicles, human resources and infrastructure, as well as in finding consistent markets for the least economically viable materials. Members welcome guidance on how the Scottish Government would propose to support Local Authorities faced with such circumstances.
4. In rural Local Authority areas, the Council's trade waste collection may be the only option available to Small to Medium size Enterprises (SMEs), thus the new Duty of Care requirements could put considerable pressure on rural Authorities to collect all key recyclables. In such areas, the most effective method of collection for SMEs may be through "bring bank" facilities or by adding SMEs onto existing household collection routes. However, despite relative cost effectiveness, these systems would result in data reporting difficulties as trade waste and household waste could be collected within the same vehicle. Members welcome clarification on whether such arrangements would be deemed acceptable under the regulations.
5. LARAC members would welcome further clarification of how the new Duty of Care requirements will be monitored and enforced, and what resources will be made available for the education of all relevant stakeholders in the lead up to the introduction of the new requirements?
6. Finally, LARAC would also welcome guidance regarding what flexibility the new regulations will have in the eventuality of any unforeseen failure in the markets for recycle?

Q4. Do consultees consider that Government should mandate more specifically what actions waste collection authorities must take to improve recycling of waste from households? Is so, what are they?

No.

As for Q2, above.

LARAC members support the view that local authorities are best placed to decide the most suitable collection regime for their locality. A "one size fits all" approach to waste management does not allow local circumstance and deliverability to be taken into account.



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Q5. What additional measures, if any, should Government consider in order to oblige householders to recycle?

LARAC members suggest that continued communication, education, and householder participation is integral to bringing about the change in mind-set required to move forward to a Zero Waste Scotland. Developing household recycling collection systems that are readily available, easy for householders to use and understand, and appropriate to local housing, geographical and socio-economic need is key to enabling the required changes to occur. Similarly, ensuring that residents are aware of the financial, as well as the environmental, implications of not recycling may further enable individuals to take responsibility for their purchasing choices and to better understand the consequences of those choices.

Continued strong and committed central leadership from the Scottish Government and Zero Waste Scotland is vital, as is co-ordinated cascading of communications from the centre to each local authority and household in Scotland. The recent National Recycling Campaign in Scotland has been widely advertised on television and radio, and is a good example of the type of support that local authorities need to improve recycling performance.

Given the significant changes in collection, treatment infrastructure and behaviour that will be required to achieve the new targets, members would also suggest that the Scottish Government give due consideration to all possible options that may help to increase recycling rates. This should include consideration of mandatory recycling for householders, and direct and variable charging. Members do not suggest that all such options are necessarily desirable, simply that all options should be considered carefully and rationally. In raising such issues for debate, the Scottish Government will continue to show true leadership in developing a more reasoned and responsible agenda for debate on the importance of individual responsibility and accountability in wastes management.

In order to drive down waste at source and also increase the ease with which householders can recycle their wastes, LARAC members support extended producer responsibility, in particular for packaging wastes.

Q6. Do consultees agree that banning the listed materials accompanied by a "requirement to sort" will be effective in achieving high recycling rates? If not, what additional measures or alternative measures could be adopted?

LARAC members broadly support the introduction of landfill bans accompanied by a "requirement to sort" subject to the caveats detailed in Q1. and Q2, above.

However, members have some concerns regarding a potentially confusing lack of clarity in the consultation documentation, and would welcome further guidance on the following:



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"The mixing of any waste which has been collected and carried separately from other types of waste in accordance with section 34(C) or 45C(4) of the Environmental Protection Act 1990 with any other type of waste or material is prohibited to the extent that such mixing would hamper further recovery". (p16 and p32 Amendment of the Waste Management Licensing Regulations 1994 and p17 and p33 Amendment of the Pollution Prevention and Control (Scotland) Regulations 2000)

"any waste which has been collected and carried separately from other waste types in accordance with section 34(C) or section 45C(4) of the Environmental Protection Act 1990" (p18 and p33 Amendment of the Landfill (Scotland) Regulations 2003)

This suggests that only when the key recyclables have been collected separately are they banned from landfill and not that those materials are themselves specifically banned.

The explanatory note on p16 relating to the above section of regulation does not use the same wording and states "where such mixing would hinder future recycling" (p16 7.1). Recovery and recycling are two separate steps on the waste hierarchy and it is important that the correct terminology is used consistently in the regulations and the supporting document.

It is difficult to provide a clear answer of the merit of banning the disposal of waste that has been 'collected and carried separately' to landfill when there is no clarity on the definition of these wastes within the regulations. Does this apply to contamination that has been collected with "collected and separately carried" waste but has to be removed before material can be recycled?

LARAC would also suggest that consideration is given to the use of other complementary policy measures to work concurrently with a landfill ban. Such measures include Landfill Tax, Extended Producer Responsibility, the new Duty of Care requirements, Quality Standards, and economic support and incentives to develop markets and drive diversion forward. We believe that landfill bans should support other measures, rather than being the main driver for diversion.

Again, LARAC members would welcome further clarification of how the bans will be monitored and enforced, and what resources will be made available for the education of all relevant stakeholders in the lead up to the bans?

LARAC members are also concerned about the impact of market failure on waste flows and the subsequent absence of buyers for segregated recyclables. Although many of the materials that will be collected have well established markets and are, in the view of our members, relatively insulated from complete market failure, this is not true of less established, developing markets for marginal materials such as mixed and hard plastics. The Guidance on Landfill Bans makes reference to allowing storage at landfill sites, however, there is no explanation of how long this would be allowed to continue and is hardly in tune with the move away from landfill sites required by the Zero Waste Plan.

Finally, members are of the view that the requirement to separate will clearly assist in the achievement of higher recycling rates. The same cannot be said for the biodegradability limit on waste to landfill. As proposed, this element of the regulation will result in the prevention of



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potentially damaging materials entering landfill, something which is to be welcomed and supported.

There is however, no requirement to remove valuable recyclables from the mixed, unsorted waste stream prior to landfilling, merely to reduce biodegradability. The absence of an equivalent to clause 9B (2) in the amendment to the Landfill (Scotland) Regulations 2003 (Clause 5) is questioned, and we welcome further guidance.

Q7. Do consultees consider that banning the listed materials accompanied by a requirement to sort will help investment in the infrastructure required to achieve high recycling rates?

No, not on its own.

LARAC members have some concern that simply setting deadlines for landfill and incineration limitations, the "market" will not provide the necessary infrastructure to meet the needs of waste producers and managers within the allotted time. Members would welcome further detailed information that sets out what infrastructure will be required, where it needs to be located, and when it needs to be operational.

Again, LARAC would suggest the use of other complementary policy measures to work concurrently with a landfill ban and/or requirement to sort. Such measures include Landfill Tax, Extended Producer Responsibility, the new Duty of Care requirements, Quality Standards, and economic support and incentives to develop markets and drive diversion forward. We believe that landfill bans should support other measures, rather than being the main driver for diversion.

Members would welcome some indication of proposed changes to Planning and Waste Management Regulation processes in order to enable the fast tracking of infrastructure developments. In the absence of such a plan, members have concerns that the required infrastructure may not be in place to meet the proposed deadlines set out in the consultation document. Flexibility within, for example, Scottish Planning Policy Statement 10: Waste Management and Planning could act as a further tool to aid investment in the infrastructure required to support and achieve high recycling rates, ie. by ensuring that new developments are designed to incorporate the relevant range of recycling containers, and new facilities and industry are in place in time for the planned regulatory changes.

Also, the regulations as proposed do not appear to provide sufficient clarity and certainty to the investment community to drive investment in infrastructure. In particular, the absence of rationale for the selection of a 3% Total Organic Carbon limit on landfilling of waste raises serious doubt as to whether this will be achieved with established technologies. This view has been taken following discussions with existing technology providers.

Linking this risk with the relatively short timetable to deliver treatment infrastructure across the whole Scottish waste industry (discussed further under question 12), members can only conclude that the investment community will be cautious when addressing opportunities in the Scottish waste sector.



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There are two possible outcomes from this position, firstly, that investment will not be forthcoming resulting in lack of delivery of infrastructure or secondly, that investors will seek to either transfer risk to those procuring services or build in high risk margins, which, in turn, will lead to higher costs.

As for Q3 and Q6, above, LARAC would also welcome guidance regarding what flexibility the new regulations will have in the eventuality of any unforeseen failure in the markets for recycle?

Q8. What pre-treatment do consultees consider is necessary in order to ensure that only residual waste is managed in EfW facilities?

LARAC supports the stabilisation of unsorted waste in a pre-treatment process, as discussed in Section 10.1, and broadly supports the pre-treatment options outlined in the consultation document. In particular, LARAC supports the objective to 'subject wastes to all reasonably practicable efforts to extract recyclable materials prior to incineration or co-incineration'. These 'reasonably practicable efforts' for example would include the provision of drop-off recycling banks, kerbside recycling services, home and kerbside composting services, and waste education and awareness raising campaigns. However, rather than leaving the development of pre-treatment options up to market forces, members would welcome further information/analysis by the Scottish Government of what pre-treatment infrastructure is required, where it needs to be located, when it needs to be operational and what interventions the public sector needs to make to ensure that the required level of investment is made. This would include for example such pre-treatment infrastructure as MRF's, Mixed Waste Processing Facilities ("dirty" MRF's), MBT, and Autoclaving facilities.

Members welcome clear definition and clarification of waste suitable for EfW facilities. In the consultation documentation residual waste is defined as waste which has been pre-treated and the consultation pack also states that only waste which has been through some pre-treatment in order to remove additional recyclables, can be sent to energy from waste. Members would welcome one clear definition of waste suitable for management in EfW plant in order to prevent possible confusion.

Q9. Do consultees agree that this is an appropriate measure to prevent over-provision of residual waste management infrastructure?

In general terms, yes, LARAC members support the Scottish Government's proposals for avoiding over-provision of residual waste management infrastructure.

However, members would urge caution in overly minimising provision of residual waste management infrastructure. Minimising the requirement for landfill requires adequate capacity to be provided to extract recyclable, compostable and renewable (with calorific value) material from mixed wastes before landfilling or mass incineration.

Q10. What single stream waste, such as contaminated wood, do consultees consider is appropriate for EfW?



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Treated wood, waste oil and tyres may be appropriate for EfW. Also, should recycling markets collapse, and there is no other suitable disposal option for the wastes, would the regulatory regime allow limited timeframe exemptions for waste streams such as mixed plastics, paper, cardboard etc. to go for EfW treatment?

With regard to the Zero Waste Plan Implementation Guidance on Inputs to EfW facilities (page 73 of the consultation document), LARAC members would suggest that, where practicable treated sewage sludge would be best managed via Anaerobic Digestion processes rather than EfW. Sewage sludge is not a good fuel for EfW as it is wet (i.e. it is a very inefficient fuel because of the energy needed to dry it first). EfW is more appropriate for incinerable material that is too heavily contaminated at source to be recycled or made into compost.

Q11. Scottish Government intends that the EfW restrictions will apply immediately to any new installation. What transitional period should be allowed for existing EfW installations to apply with the regulations?

No longer than 5 years.

Not until the end of any currently held license.

Members feel that there is no reason to introduce restrictions prior to the landfill ban, they should dovetail to ensure sufficient alternative capacity.

Q12. Do consultees consider the lead in times for the landfill bans are reasonable?

No, 4 years may not be enough time to get all of the necessary infrastructure in place. Based on the figures in Table 1 below, the new facilities would not be operational for will not be operation until after the ban has been introduced. LARAC would suggest that in order for the requisite infrastructure to be put in place, a suitable lead-in time for the introduction of a landfill ban should be between 7-10 years. Timely consideration of the issues regarding planning, communications and funding is also paramount to ensuring a smooth and well-managed transition.

Table 1: Estimate of Time Required for Delivery of MBT Plant

Stage	Time required
Assess impact of Regulation and amend waste strategy	12 months
Public Procurement Process	24 months
Planning Permission	12 months
Construction	18 months
Total time	5.5 years

The timetable above also takes little account of potential delays in development, especially planning risk. Whilst it is recognised that some attempts are being made to improve waste planning these are likely to take time to become embedded in the planning system (especially when considering the 5-year life-cycle of development plans), there is an strong chance that



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some applications will still be rejected resulting in time-consuming appeals or loss of capacity. As for Q7, above, Members would welcome some indication of proposed changes to Planning and Waste Management Regulation processes in order to enable the fast tracking of infrastructure developments.

However, members also recognise that the waste management industry, whilst well developed and international in nature, does not have unlimited development capacity and it must be questioned whether there is sufficient capacity within the waste and development industry to deliver the scale of infrastructure required. Members welcome clarification on how a potential situation where insufficient capacity results in no legal outlet for unsorted waste within Scotland would be managed.

Finally, LARAC would suggest that any landfill ban on biodegradable waste should be implemented not before 1 January 2019 (based on the presumption that these Regulations come into effect on 1 January 2012). This extra 2 years would allow the opportunity for careful consideration of the impact of regulations on all sectors, identification of the best technical, environmental and economic solution and the best service delivery model (which may include joint solutions between waste producers).

Q13. What test method do consultees consider should be used to assess the level of biological activity?

LARAC is not in a position to comment on this question. However, whichever measure is adopted, it must be demonstrated to be technically, environmentally and economically practicable. No such justification has yet been provided for the proposed measure.

Q14. Do consultees have any other comments?

LARAC members would welcome further clarification of the responsibilities Local Authorities will have with regard to the enforcement of key strands of the proposed new Regulations.

For example, in the Duty of Care Code of Practice: Section 2 Glossary of Terms, "Enforcement Officer" is defined as "an officer of the Scottish Environmental Protection Agency or Local Authority who has powers in connection with the investigation of suspected offences, the detection and apprehension of offenders and granted powers to act in respect of environmental offences". Members would welcome further information regarding the training, extra staff and resources that will be available to Local Authority officers in order to fulfil these additional duties.

LARAC considers that a concordat should be drawn up between SEPA and Scottish local authorities to agree the demarcation of responsibilities in relation to enforcement of these new regulations.

Again members do have some concern surrounding the lack of clarity/definition that exists in the documentation and wish to highlight that it is essential for this to be addressed to provide a clear and consistent approach in the final regulations and guidance documents.



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Much of the consultation documentation still seems to be a policy exposition rather than a clear statement of requirements based on thorough analysis, and the absence of a cost impact assessment raises considerable questions about whether the regulations are practicable and deliverable.

For these reasons, members believe that, in its current form, the documentation does not yet provide a sound basis for medium-long term decision making.