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Revised WFD Consultation (Stage Two)
Waste Framework Directive Unit
Defra
Area 6D Ergon House
17 Smith Square
London SW1P 3JR

September 2010

Dear Sirs/Mesdames,

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

I am writing to present the LARAC response to the Government's second stage proposals for the transposition of the revised Waste Framework Directive, 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). 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. This response has been peer reviewed by members of LARAC's policy team and executive committee. All LARAC members have been invited to contribute to the response through the monthly member e-mailing, and have been encouraged to provide their views through the members' discussion forum on the website. Contributions have been received from a number of members and these have been taken into account in drafting the response below.

Overall LARAC supports the proposals contained within the consultation, although we believe the costs of complying with Arts. 4, 11 and 28 are very uncertain, will vary widely from one public authority to another, and are probably seriously under-estimated. We also have doubts about the "wait and see" approach to achieving the 50% household recycling target by 2020 in England because of a number of factors that aren't fully recognized in the LAWRRD model. In Wales, measures to ensure compliance, including



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statutory municipal waste recycling targets, appear more robust. I have provided more details in the answers to the consultation questions below.

If you have any queries on this response or would like to discuss the matter further then please contact me on 01642 524466 or Andrew.craig@teesvalleyunlimited.gov.uk.

Yours faithfully,

Dr Andrew Craig
Principal Policy Officer



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

Question One (Do you agree that the draft transposing Regulations fully and correctly transpose the requirements of the rWFD?); and Question Two (Do you consider that any of the provisions in the draft Regulations do more than is necessary to transpose the requirements of the rWFD?)

Subject to our comments below, we agree that the draft regulations effectively transpose the requirements of the rWFD. Pains have obviously been taken to ensure that compliance is achieved at lowest cost, so we do not believe that more has been proposed than necessary.

We are, however, concerned at a lack of clarity in places about how and by when the necessary instruments will be enacted to ensure compliance with targets (e.g. in Art. 11 giving a date by which it will be an obligation to collect separately 4 components from household waste); and where the quality of data needs to be improved in order to monitor progress, especially for Construction & Demolition (C&D) Waste. The fact that the approach to ensuring (and monitoring) compliance for household waste (less than 10% of controlled waste) is different from that adopted for other waste streams, notably Commercial & Industrial (C&I) and C&D wastes, does imply that it may be either unnecessarily rigorous for wastes collected by local authorities, or inadequate for other waste streams. Our view is that a consistent approach is necessary to ensure compliance.

The Government's proposed minimal approach to waste prevention leaves the impression that little more has to be done to ensure compliance with the rWFD, at the top of the waste hierarchy.

Question Three (Do you agree with the proposal to give effect to the waste hierarchy (a) by updating PPS10 and TAN21; and (b) through spatial planning requiring Waste Development Frameworks (in England) and LDPs and RWPs (in Wales) to have regard to the waste hierarchy?)

We agree with the proposal in principle. We also endorse in general draft guidance recently issued by DEFRA on the application of the Waste Hierarchy, although this should be re-structured in order for it to be useful to planners. The document does not give guidance on the relative environmental or financial costs of options at different levels in the hierarchy.

However close consideration will have to be given to the effects of the "localisation" of waste planning on the application of the Waste Hierarchy. For example, waste treatment or recycling options may not need to be available within a Planning Authority's area, but environmental and financial considerations may lead to local solutions that are lower



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LOCAL AUTHORITY RECYCLING
ADVISORY COMMITTEE

down the waste hierarchy if other Planning Authorities don't agree to provide for facilities for education, re-use or recycling for a wider area. Revising the guidance must be considered an urgent priority by the Government. Updated PPS10/TAN21 must also take more account of the need to encourage investment in "resources-based" industries in line with the Waste Hierarchy.

Question Four (Do you agree with the proposals in the consultation document about permits & exemptions?)

LARAC isn't able to provide accurate information on the number of permits delivered by its members. However we believe it still to be relatively small. We agree with the principle of attaching conditions to permits promoting the waste hierarchy, but we believe it might prove difficult to enforce in practice. The proposal implies requiring organizations to publish waste management plans. Will the production of a Waste Management Plan be taken as evidence that an organization has implemented it satisfactorily?

We endorse a "light touch" approach for exempt operations that are normally towards the top of the waste hierarchy in any event.

Question Five (Do you agree with the proposal to give effect to the waste hierarchy by adding a standard declaration to the duty of care waste transfer note?)

As in our response to the previous question, we agree with the intention behind this proposal, but we are sceptical about its effectiveness. The proposal appears to add to the bureaucratic load (especially option (a)), but it will only be effective if it is monitored and enforced, both in the declaration but in the application. Option (b) appears to be little more than a requirement to tick a box. Will such a provision change the practices of a significant number of organizations? We don't think so.

An alternative approach would start with a requirement for waste producers to submit data, including EWC codes, to a national database, giving information about the origin of waste as well as the disposal point. Once established, the information on this database could be used to monitor compliance with Art.15 and the waste hierarchy. Waste producers could then be required to demonstrate that they were moving the wastes they produce up the waste hierarchy.

Question Six (Do you agree with legislative proposals to provide and review annually guidance on the application of the Waste Hierarchy?) and Seven (What are your views on the draft guidance on the Waste Hierarchy? – England only)

LARAC agrees with the provision and annual review of guidance on the application of the waste hierarchy, and will be happy to contribute to its continued development, including extending its scope to include more waste streams. The first draft guidance is generally useful, having been produced after a great deal of thought and informal discussion with



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interested parties, although it could be re-structured to make it more useful as a practical guide to planners.

We find just one area of disagreement, in that we would suggest that composting should be given a status higher in the hierarchy where (woody) materials are suitable for composting and less suitable for AD. The wider environmental benefits of soil (including carbon sequestration) should be taken into account. (We note that residues from AD are composted and spread to land. However lingo-cellulosic materials do not readily engender methane and so they are less suitable for AD).

Question Eight (Do you believe that a) civil sanctions; or b) a separate collection requirement implemented as a condition in the waste carrier registration and permitting regime should be used to enforce the provisions for separate collections of recyclables from commercial and industrial waste?)

We believe civil sanctions would be ineffective because organizations flouting this requirement would have recourse to the provision that it is only necessary "where technically, environmentally and economically practicable". Although preferred to criminal sanctions, civil sanctions would not be enforceable by local authorities.

If separate collections make money, they will be implemented. If they don't they will be designated as economically impracticable. It is reasonable to argue that this requirement is already being met in the commercial and industrial sectors. Separate collections are already available "where economically practicable", where not it doesn't occur.

Actively enforced, making separate collections a requirement of waste carrier registration is far more likely to work. However this would place the onus on waste carriers and permit holders, not the producers of the waste or their agents. A requirement for waste producers to have, and adhere to, waste management plans demonstrating compliance would complement this measure. For very small organizations this may be seen as excessively bureaucratic, so they could meet the requirement by demonstrating that their waste service provider gives them a recycling service.

Active enforcement, however, has resource implications for the Environment Agency and local authorities, for which provision hasn't been made.

Question Nine (Do you consider that the costs and benefits of the transposition and implementation of the provisions of the rFWD have been accurately assessed?)

No attempt has been given to quantify the costs to the 7 English local authorities identified as not providing, or not having plans currently to introduce, the separate **collection of plastic bottles**. (According to Recoup and WRAP, considerably more than 7 English local authorities do not yet provide kerbside collection facilities, although we don't know how DEFRA has assessed the number that "have plans to introduce" such



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LOCAL AUTHORITY RECYCLING
ADVISORY COMMITTEE

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schemes. Does this include a number that propose to introduce "bring" facilities?). Although LARAC agrees that Option One (relying on separate collections of plastic bottles, as opposed to mixed plastics in Option Two) probably meets the minimum requirements for separate collections of plastics under Art. 11(1) of the WFD, we do not agree with the statement that "net benefits of plastics recycling are deemed low". Life Cycle Analysis studies have shown that recycling plastic reduces overall carbon dioxide emissions compared with landfill and incineration. **Plastics recycling** has a contribution to make to the UK's energy and raw material security. By pursuing a "lowest cost" route to transposition, the Government is in danger of neglecting the wider economic, environmental and societal benefits of plastics recycling in all its manifestations. This also applies generally to wide application of the "technically, environmentally and economically practicable" provision in the rWFD.

Cost estimates on public authorities that are given in the Impact Assessment appear to be conservative and of limited meaning or benefit when severe financial constraints are being placed on local authorities. Because of what we believe are wide variations in the costs to individual local authorities of complying with new regulations and guidance, there is considerably uncertainty in what these costs will be over England and Wales. We are unable to provide a better universal basis for estimating these costs than that provided in the Impact Assessment (IA), but hold that such estimates can scarcely merit being called "ballpark" figures, let alone be used as evidence for policy. They certainly can not be used to justify statements such as "we would expect the additional cost to be minimal" and "giving a *maximum* total cost of £304k" (both on p24 of the IA. Our italics).

To ensure compliance with Art. 28(b)-(e) will require:

- Provision of continuing and regular surveys of commercial waste arisings, for which *costs have not been identified*, notwithstanding the good start that has been made on this since the first consultation on the rWFD. Better information on the type, quantity and source of non-local authority "municipal wastes" is still required.
- A wide ranging review of *municipal waste management strategies* and Government guidance, starting with a revision of PPS10. In some cases, we believe waste local plans are still not well articulated with Waste Collection Authorities' waste management plans that focus on collections and public engagement. Costs of reviewing, amending and, in some cases, re-writing municipal waste management strategies will vary from local authority to local authority. For some the additional cost will be negligible, for others it will amount to tens of thousands of pounds. We believe the cost estimates given in the IA are, overall, too low.

In relation to the **household waste target** for 2020, whilst LARAC supports a "wait and see" approach to implementing landfill bans, this is based on a belief that municipal sector waste strategies will be well developed and current large-scale PFI-supported infrastructure projects largely operational by 2014 – not that there will be an inevitable



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ADVISORY COMMITTEE

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substantial increase in recycling. Notwithstanding that this time frame seems to be in line with the rWFD requirement of 50% recycling and re-use by 2020, a similar approach for achieving recycling rates of 50% may not be wholly appropriate in this instance. In this regard a number of factors haven't been taken fully into account, including:

- Imposed recycling targets have been lifted from individual authorities. The new Government's policy driver of "localism" will accelerate the trend against municipal recycling being driven by targets that was started by the previous government. (The Welsh Assembly Government's approach, with statutory household waste recycling targets, appears to us to be much more robust);
- The main effect of continuing the landfill tax escalator is to drive the development of waste treatment technologies, not separate collections for recycling;
- Waste policy is still not articulated with the drivers for local authorities to reduce damaging emissions that cause climate change, for example the Carbon Reduction Commitment (CRC). Although emission reductions through recycling and waste minimisation are now well understood, they are not credited to local authorities (and other organizations) when they report, trade and are incentivised to reduce their emissions. The need to reduce carbon dioxide emissions is now one of the strongest drivers for local authorities, not the need to increase recycling;
- It is not certain what effect the pronouncements of the Communities and Local Government Secretary, promising to end "ludicrous" local authority "non-jobs", will have on local authorities' efforts to engage their populations participating in recycling and waste minimisation initiatives. However the fact that he explicitly mentioned communications and waste strategy officers means that this can only damage the excellent work that local authorities have carried out over the last 5 years, in conjunction with WRAP, bringing about the cultural change and wide public awareness of the need to increase recycling. The LAWRRD does not take into account the likely detrimental effects both of this, and also financial constraints that will force local authorities to reduce provision for "non-front-line services".
- Likewise, the instruction given by the Communities and Local Government Secretary to the Audit Commission to withdraw guidance encouraging local authorities to collect residual waste on alternate weeks will have an as yet undetermined but clearly detrimental effect on recycling rates.
- New financial constraints on local authorities mean that recycling provision will be reviewed and, in some cases, reduced where costs exceed gains. Paradoxically, one effect of the landfill tax escalator (if revenues are not released to support investment in waste management) may be to increase the financial pressure on local authority waste management operations generally to seek savings in recycling collection costs.

LARAC believes that the above factors may result in a stalling in municipal recycling rates and, in some cases, a reduction.



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ADVISORY COMMITTEE

We agree with proposals for Post Implementation reviews of the transposing regulations. However the above issues must be addressed on a shorter time scale if we are to be sure of achieving the household waste recycling target. We hope to bring them to the table in the Government's current review of waste policy.