



Chartered Institute of
Environmental
Health

Sefydliad Siartredig
Iechyd yr
Amgylchedd

Proposed Waste (Wales) Measure

Response to the National Assembly for Wales' Legislation Committee No. 4

March 2010

Sefydliad Siartredig Iechyd yr Amgylchedd

Fel **corff proffesiynol**, rydym yn gosod safonau ac yn achredu cyrsiau a chymwysterau ar gyfer addysg ein haelodau proffesiynol ac ymarferwyr iechyd yr amgylchedd eraill.

Fel **canolfan wybodaeth**, rydym yn darparu gwybodaeth, tystiolaeth a chynghor ar bolisiau i lywodraethau lleol a chenedlaethol, ymarferwyr iechyd yr amgylchedd ac iechyd y cyhoedd, diwydiant a rhanddeiliaid eraill. Rydym yn cyhoeddi llyfrau a chylchgronau, yn cynnal digwyddiadau addysgol ac yn comisiynu ymchwil.

Fel **corff dyfarnu**, rydym yn darparu cymwysterau, digwyddiadau a deunyddiau cefnogol i hyfforddwyr ac ymgeiswyr am bynciau sy'n berthnasol i iechyd, lles a diogelwch er mwyn datblygu arfer gorau a sgiliau yn y gweithle ar gyfer gwirfoddolwyr, gweithwyr, rheolwyr busnesau a pherchnogion busnesau.

Fel **mudiad ymgyrchu**, rydym yn gweithio i wthio iechyd yr amgylchedd yn uwch ar yr agenda cyhoeddus a hyrwyddo gwelliannau mewn polisi iechyd yr amgylchedd ac iechyd y cyhoedd.

Rydym yn **elusen gofrestredig** gyda dros 10,500 o aelodau ledled Cymru, Lloegr a Gogledd Iwerddon.

The Chartered Institute of Environmental Health

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As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

Dylid cyfeirio ymholiadau am yr ymateb hwn at:

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The Chartered Institute of Environmental Health (CIEH) is pleased to respond to this consultation by the National Assembly Government.

The CIEH will respond to the consultation questions in the order of raising.

1. Is there a need for a proposed Measure to deliver the stated objectives of making provision to reduce the amount of waste and litter in Wales and contributing to the development of more effective waste management arrangements in Wales?

In the view of the CIEH this question needs to be broken down and addressed as its constituent parts.

Plastic bag element

We are of the view that the proposed Measure is desirable to achieve a reduction of the amount of plastic bag litter in Wales. The evidence quoted in the memorandum accompanying this consultation shows clearly that plastic bag litter makes up a considerable proportion of the litter in Wales and that unless recovered and disposed of appropriately that this litter will persist in the environment for significant periods of time. Litter has a detrimental effect on the countryside from a visual amenity point of view, constitutes a threat to wildlife, pollutes waterways, reduces confidence in residential areas and requires expenditure by local authorities, landowners and manager to remove and dispose of it.

There are currently in Wales a number of measures that can be used to address littering, amongst them being provisions relating to administering Fixed Penalty Tickets to individuals dropping litter and the provisions for the prosecution of individuals fly tipping material that blows around as litter. The quantity of litter collected in Wales suggests that these measures are not enough to deter littering, hence it is our view that removal of a proportion of the material that makes up 2.7% of litter by weight is a desirable outcome.

Waste targets element

We agree that the proposed Measure regarding Waste Targets is necessary if the stated ambition of Wales becoming a high recycling society by 2025 is to be achieved. Whilst much is currently being done by local authorities and others to increase recycling it is clear that we need a step targeted approach to ensure that Wales manages its waste effectively. It is a truism to say that 'what gets measured gets done', but the CIEH is of the view that a targeted approach such as the one proposed will focus local authorities to ensure that recycling, reusing and composting levels are driven up consistently.

Landfill element

The CIEH agrees that a proposed Measures prohibiting or otherwise restricting specified types of waste being deposited to landfill would deliver the stated objective of developing a more effective waste management system in Wales. In order for Wales to meet the requirements of European legislation there is a need for this Measure.

Site Waste Management plans element

The CIEH gives qualified support to the proposal that Welsh Ministers should have the powers suggested to require the Construction and Demolition (C&D) sector to prepare plans for the management and disposal of waste created by its activities as necessary to

achieve the objectives of the developing a more effective Waste Management system for Wales.

2. How will the proposed Measure change what organisations do currently and what impact will any such changes have?

Plastic bag element

The evidence available from the Republic of Ireland suggests that introducing a charge for single use plastic bags reduces by a very significant percentage the number of plastic bags given by retailers to customers. The number of reusable bags sold has increased and there has been very little customer hostility to the change.

The Republic of Ireland legislation defines single use plastic bags by exception¹. It is a complicated definition and whilst workable by single product retailers such as fresh fishmongers or butchers it is hugely complicated for multiproduct retailer such as supermarkets to segregate those products that attract free carrier bags from those that do not. It is, in our view, likely that multiproduct retailers will move away from the practice of giving free carrier bags due to the complexity of the system and will impose a charge for carrier bags where or not they may be exempted from charge by virtue of their contents by regulations. We do not say that this is a disadvantage, but rather note it as a likely impact. We also suggest that this will lead to reuse of other forms of waste, notably in the Republic of Ireland of cardboard boxes which is an additional benefit of the scheme.

Clearly it will be necessary for retailers to maintain a record of the number of single use carrier bags they sell to customers. This will require systems to be put in place and is likely to be perceived as an administrative burden which will incur costs for the retailer. It will also be necessary for some form of auditing and regulation of the scheme to be put in place to ensure that there is compliance with the scheme. The proposed Measure is silent on the point of how the legislation will be enforced but there will inevitably be costs associated with this. We expand more fully on the financial implications of this in our response to Q5 below.

Waste target element

As noted in the Memorandum accompanying this consultation traditionally Wales and the rest of the UK has had low levels of recycling and there is clearly potential to improve. CIEH recognises that local authorities have made significant strides to drive up levels of recycling, composting and waste minimalisation. Most if not all local authorities in Wales operate household recycling collections and also offer civic amenity sites where householders can recycle waste. The proposed Measure will require local authorities to continue with such schemes and to extend them to increase the types of waste collected for recycling. In addition local authorities will have to continue to engage with householders and other waste producers to promote waste reduction and recycling to reduce the amount of waste going into the municipal waste stream.

Raising target amounts to be recycled and reused from the municipal waste stream will require local authorities to engage with householders and other waste producers to separate waste at source, or in the alternative to engage in a waste sorting process after collection, or more likely to undertake a combination of both. Whilst clean stream waste collection is to be preferred, waste screening is likely to be required and such systems are resource intensive. It is therefore likely that there will be a need for investment by local authorities in systems

¹ SI 605/2001 Waste Management (Environmental Levy) (Plastic Bags) Regs. 2001 Reg 5

and equipment that will enable them to sort municipal waste to ensure targets are met, and this will put pressure on them in the current financial climate.

Landfill element

The CIEH suggests that whilst the proposed measure will have only a limited impact on local authorities, where domestic waste is, in the main, separated into recyclable and non-recyclable waste and is collected in such so as to maximise recycling levels, and where civic amenity sites allow for the segregation of waste, it will have a significant effect on commercial waste management companies that have contracts with manufacturers etc, and with local waste disposal companies such as Skip Hire Operators where the bulk of waste collected is not segregated and is disposed of to landfill. Such operators may not have in place the type of screening systems necessary to separate waste into those types of waste that may be land filled and those which may not. Introducing such a requirement may increase the cost of such services where the services are operated properly and within the law, but may also encourage those who do not operate within the law to fly tip waste.

Site Waste Management Plans element

We note that the C&D sector already achieve high levels of waste management through reuse and recycling of materials. In the view of CIEH this is due in large part to the fact that Planning Authorities attach planning conditions to large projects that include demolition of structures that are in situ, requiring reuse of all of the products of demolition within the site the subject of the planning permission. Where this planning condition is imposed there is no requirement for a Site Waste Management Plan since no waste leaves the site.

The proposed Measure will affect those smaller projects where planning conditions are not attached, including small scale domestic works where the builder will typically hire a skip to take all of the generated waste material off site.

3. Are the sections of the proposed Measure appropriate in terms of achieving the stated objectives?

Plastic bag element

The CIEH is of the view that the proposed Measure is appropriate to reduce the amount of litter caused by single user plastic carrier bags. It is clear that the voluntary scheme in place at present has not achieved this aim, although we acknowledge that use of reusable 'Bags for Life' has increased. As the Ban on Smoking in Enclosed Public Places has shown where voluntary measures prove to be ineffective or not to be as effective as is necessary to achieve the desired outcome legislative intervention can be effective. In this case it is suggested that imposing a levy on single use carrier bags may increase levels of bag reuse and reduce the numbers requested by customers, give carrier bags a 'value' in terms of the price paid for them and thereby reduce disposal of them and hence reduce carrier bag litter.

We do not consider that the proposed Measure is appropriate as currently worded in ensuring that the net proceeds of revenue raised by the sake of single use carrier bags to specific environmental purposes of bodies. We do not disagree with the principle at all, but question whether the proposed mechanism, which is in essence reliant on calculations made by the retailers as to how much should be paid over and them to their choice of environmental purpose of body will work in practice without some form of overseeing regulatory body to ensure that the calculations are accurate and a true reflection of monies raised, that the charges made by the retailer for administering the system and taken from

the levy monies are fair and reasonable and that they monies so raised are spent as intended.

Waste target element

Setting waste targets is an appropriate way of achieving the stated target moving towards increasing recycling. The CIEH considers that it is important however to ensure that as specified in ss 3(4) that the target amounts should be capable of amendment. It is important that targets are not fixed at levels that are unachievable. If it is clear that the targets are being achieved with relative ease it is appropriate to amend them upwards, if however it becomes clear that local authorities cannot achieve the targets for whatever reason it is appropriate that they should be reduced. The suitability of the targets must be monitored – it may be the case that recycling and home composting levels rise to such an extent that the targets cannot be achieved because the nature of waste going to the municipal waste stream is such that it cannot be reduced to the target percentage. Where householders and producers of waste are exploiting all of the recycling, reuse and composting opportunities available to them, that waste that they do deposit to the municipal waste stream may not be capable of reuse or recycling and it is in such cases inappropriate to penalise local authorities for failing to meet the targets.

Where local authorities provide Civic Amenity sites for use by householders and others to dispose of waste we are aware that all of those using the site may not be from the area providing the facility, but that waste collected at the site will fall to be dealt with by that local authority. We point out that over restriction of access to these sites may be counter intuitive, and that waste deposited on these sites may if access is refused be fly tipped with consequence consequences for the environment and generating clean up costs for the local authority. Access to these sites should not be restricted since the consequences to the environment of fly tipping are greater than where the material can be sorted and reclaimed so far as is possible before being sent to landfill.

We agree that consultation with the named parties is appropriate since they have duties imposed on them either to comply with or to regulate the proposed Measure and we further agree that guidance should be issued by Ministers as and when a need is identified. It is important, particularly where imposition of financial penalties is being considered that there is guidance to ensure that all parties have the same understanding of the legislation, to prevent anomalies arising e.g. the inclusion of abandoned vehicles collected by local authorities being included in the recycled metal targets by some local authorities and not by others.

Landfill element

The nature of the proposed Measure would be appropriate in terms of reducing the volume of the specified waste material being deposited to landfill in Wales. What it will not do however is prevent 'waste tourism' i.e. waste that is prohibited from being deposited to landfill in Wales being exported to England for disposal to landfill here. It is already the case that some Welsh local authorities and waste disposal companies take waste to landfill sites in England for disposal, and in environmental terms is it not desirable that an indirect effect of the proposed Measure should be to increase waste being 'exported'.

In respect of the issue of civil sanctions as described in sec.10 of the proposed regulations. The present requirement that individuals or companies that breach environmental legislation be prosecuted in the criminal courts is cumbersome and slow and requires the enforcement agency, usually the Environment Agency or a local authority to be able to prove that the offence has been committed by the named party to the criminal standard of proof, i.e. beyond reasonable doubt. In most cases of fly tipping this is difficult to achieve. Whilst the option to impose civil sanctions would potentially reduce the need for enforcement

authorities in Wales to engage in criminal proceedings with those alleged to have fly tipped or to have breached the regulative requirements it is important that there should be no reduction in the burden of proof where such allegations are made. We also note that criminal convictions against waste management companies or those individuals operating them are taken into account when determining when Waste Management Licenses should be renewed. It is important that a public register of civil sanction issued by enforcement agencies should be maintained so that all such sanctions issued against a company or individual can be considered when an enforcement agency is considering the disposal of a matter and when Waste Management Licenses are being considered for renewal, as the existence of previously issued civil sanctions would be a material consideration in both matters.

Site Waste Management plans element

Yes. The CIEH notes however that the measure should target those sites where waste arisings are currently an issue, rather than those, such as large C&D projects, where waste arisings are not an issue.

Specifically the Measure should address smaller scale construction projects, such as domestic dwellings conversions and adaptations which give rise to relatively small amounts of waste but which are often the source of fly tipped materials.

4. What are the potential barriers to implementing the provisions of the proposed Measure (if any) and does the proposed Measure take account of them?

Plastic bag element

Whilst the larger supermarkets have adopted policies that promote use of 'Bags for Life' and have sought whether through requiring payment for single use bags or not providing bags unless specifically requested to do so by the customer smaller retailers and premises such as market stalls have not done so. Policing the way in which the scheme is implemented by smaller retailers and markets stalls, farm shops etc may be extremely difficult. It is also the case that measuring the number of single use carrier bags given out by large retailers with appropriate computer systems to do so may be achievable, we question whether this will be so easy to achieve where no such systems are used.

We also consider that there is potential for confusion where single use carrier bags are reused by retailers. An example of such an arrangement is a farm shop where local villagers collect their carrier bags and give them to the farm shop where they are used for a second time. Although the carrier bags are being used by the farm shop for the first time and are essentially single use carrier bags it will be the second time (at least) that they have been used, having effectively been recycled by the first 'owner' of the bag. We would not wish the scheme to prevent such reuse of carrier bags or to make such reuse difficult.

Waste targets element

Where local authorities are required to invest significant sums in recycling centres for sorting waste, in building composting facilities or in implementing clean stream recycling systems the current financial pressures will be a barrier to implementation. This is not something that local authorities to overcome in the short term, and where investment is necessary the Welsh Assembly Government will have to provide support.

We are also cognisant of the fact that there is often opposition from local residents to building of recycling or composting centres and that the planning system is slow and cumbersome and can delay proposed developments significantly. The Welsh Assembly Government could consider issuing Supplementary Planning Guidance such that there is a

material planning presumption in favour of recycling or composting development to ensure that such developments come on stream as quickly as possible.

At the present point in time technology allows for the recycling and/or composting of only limited materials. There must come a point where the amount of waste being recycled, reused or composted cannot be increased without advances in technology such that materials not currently capable of being so treated can be. This is clearly a barrier to success, and whilst there can be encouragement to reduce waste at source and to consider the use of alternatives to non recyclable materials development of technology to increase the range of materials that can be recycled is not the role of local authorities but may be a barrier to their implementing the provision of the proposed Measure.

Landfill element

The potential barriers to the implementation of the landfill element of the proposed directive are not barriers to the effective implementation in themselves but rather barriers to achieving the anticipated outcome of the Measure. The CIEH would not support any measure that had the effect of exporting a problem from Wales to England or elsewhere rather than tackling the issue in Wales as the country of origin.

The CIEH supports the introduction of civil sanctions as an alternative mechanism for dealing with offenders, but notes that a degree of training to ensure understanding and consistency of approach and application between all of the enforcement agencies will be necessary, and that resources must be made available to ensure this takes place.

Site Waste Management plans element

In larger C&D developments where all the products of demolition are reused on site we do not see any problems at all, indeed the system is currently working well.

We do however perceive problems in smaller scale development where not all of the waste generated, or none of the waste generated can be reused on site. Whilst plans can be made to manage the waste in actual fact all these will be details of how the waste will be disposed of, rather than used. Since it will be very difficult before works have commenced to accurately determine how much waste will arise and what the waste will be the Site Waste Management Plan will have to include an element of estimation to take account of the unknown factors. In such cases it will be hard to determine whether compliance with the plan has been achieved. It is also the case that where the plans have an element of estimation in them it will be hard to show that all of the waste generated from the site has been disposed of in accordance with the plan, there will be an element of unknown and potentially unaccounted for material that could be fly tipped rather than disposed of in accordance with the plan. Traceability will be an issue.

5. What are the financial implications of the proposed Measure for organisations, if any?

Plastic bag element

There are financial considerations that must be taken into account for a number of organisations.

Retailer providing single use carrier bags will require a system whereby they can record the number of single use carrier bags sold. The legislation in the Republic of Ireland defined single use carrier bags by exemption (see para. 2) above. Whilst this system is relatively

straightforward in a premises where single food types are sold, e.g. fishmongers, green grocers it is very much harder to determine whether a carrier bag falls within that definition where the retailer is a supermarket with a wide food offer, some of which foods if purchased would attract a 'free' carrier bag and some of which will not. In such cases it is likely that supermarkets will impose a charge for carrier bags irrespective of whether or not they would be 'free' within the terms of the definition since to do otherwise would be extremely complicated and cost prohibitive.

It follows that there will therefore be a cost to consumers who shop at retailers who decide to charge for all carrier bags irrespective of the definition used for a single use carrier bag. In part this is a matter for the consumer who will be aware of store policy and can take such steps as they consider appropriate, such as using reusable bags or using boxes etc, but there will be an impact on customers. We note that there are a number of food retailers in Wales, examples being Aldi and Lidl where there is already a charging policy for all carrier bags, and that customers do not appear to be deterred by this.

It does however seem to be the case that for the system to operate there will have to be an overseeing mechanism. In the Republic of Ireland all of the monies charged for carrier bags is paid to the Revenue Commissioners. The Commissioners have been given considerable powers to enforce the legislation, including powers of entry, powers to undertake forensic accounting and powers to seize computers and other records. In the proposed system there is no such central agency in whom the power to collect monies and to enforce compliance is vested. The scheme proposed relies on the premises complying and voluntarily paying to the arms length third party such monies as are generated under the scheme. Although there are powers given to Welsh Ministers to recover such monies if they are not accepted or applied in accordance with the scheme there is no indication as to how this will be detected or enforced.

CIEH has no wish to see a burdensome regime established to ensure compliance with the Measure but we are unconvinced that the system will work without some form of proper enforcement mechanism. We suspect that such a system will be vulnerable to mismanagement and to fraud which may lead to the whole measure falling into disrepute. We take the view that a proper and robust enforcement frame work is required and that there is a need for proper enforcement of the scheme. It is to be hoped that as the use of single use carrier bags declines and use of Bags for Life or similar becomes embedded so there will be less and less need to enforce the scheme, however in the short terms and to maintain its credibility it is necessary that it is properly policed.

Waste targets element

Implementing the proposals of the proposed Measure will mean that local authorities will not send so much waste to landfill, with a consequent saving in Landfill Costs and in the costs incurred by transporting waste to landfill sites. That having been said failure to meet the targets may result in the imposition of a financial penalty on the local authority which would have the effect of diverting monies from other local priorities. This may be appropriate where the local authority has failed to meet the targets through its own failure to address the issue but is counter intuitive where the failure arises when a local authority where it has tried to take steps to achieve compliance but has been prevented from doing so, e.g. by failure to secure planning permission etc.

There will also be significant financial implications where local authorities are required to develop new sites or invest in new technology to meet the obligations of the Measure.

Landfill element

Reference should be made to our response to Q4 above in respect of the need for training in use of and consistent application of civil sanctions by enforcement agencies.

There must also be a centrally maintained register of civil sanctions imposed that can be interrogated by enforcement agencies, the establishment and maintenance of which will also have resource implications.

Site Waste Management Plan issue

Clearly there are additional costs to developers in producing Site Waste Management Plans. The value of such plans lies in the fact that enforcement authorities will be able to consult them to determine how much waste is generated, what form the waste will take and where and how the waste will be disposed of. Ensuring compliance with the plans will be an additional burden for enforcement agencies and may require resource to support it. It should however be said that if the effect of the plans is to reduce the amount of inert and construction waste, and particularly asbestos waste being fly tipped the cost savings to local authorities of having to remove the fly tipped material and remediate the sites where the fly tipping has taken place may go some way to meeting these additional costs.

6. Are there any other comments you wish to make about specific sections of the proposed Measure?

Plastic bags element – no further comment.

Waste Targets issue – We note that sec 5 of the proposed Measure contain provisions for Monitoring and Auditing compliance with targets. Whilst it is accepted that it is necessary for compliance to be assessed and for monitoring to take place we are concerned that the Welsh Assembly Government should avoid creating an expensive and cumbersome mechanism for monitoring and auditing local authority performance. The creation of such a system or placing additional responsibilities on an existing body will require input of resources, and in the view of the CIEH resources would be better spent on practical interventions that will achieve the aims of the proposed Measure rather than administrative mechanism to measure its impact.

Landfill element – no further comment

Site Waste Management plans element – We applaud the suggestion that waste generated on construction sites should be managed at source. We also note that waste material generated on construction sites has a value, as hard core in development. There does not however appear to be any mechanism whereby sites generating reusable waste and sites requiring such material for development are linked, so that the waste generated on one site can be made available to another site where that material is required. Such a system, which could take the form of a web site would promote reuse of waste material and would be beneficial to producers and developers.

The CIEH would be happy to expand upon or clarify any of the above responses and to provide such further information as may be considered to be necessary or of value.

