



Department of the
Environment
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ENVIRONMENTAL POLICY DIVISION

CONSULTATION DOCUMENT

**POLICY OPTIONS FOR A BILL TO
INTRODUCE RECYCLING TARGETS**

Friday 3 May 2013

This document is available in alternative formats. Please contact us
to discuss your requirements:

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1. CONSULTATION ARRANGEMENTS

1.1. How to respond to this consultation

The commencement date of this consultation is Friday 3 May 2013 and it will close on Monday 2 September 2013.

The consultation paper can also be accessed at the following website address:

http://www.doeni.gov.uk/index/protect_the_environment/waste/rethink_waste.htm

Responses can be sent:

By email to: Janice.harvey@doeni.gov.uk

By post to: Janice Harvey
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When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are representing an organisation please make it clear which organisation you represent, and, where applicable, how the views were assembled.

It would be very helpful if you could record your views in the consultation response form attached in Annex A.

1.2. Enquiries

Enquiries regarding the content of this consultation paper, or requests for further copies, should be made to Janice Harvey (e-mail: Janice.harvey@doeni.gov.uk; telephone: 028 9025 4845). Information and additional copies of the document can also be requested by textphone (028 9054 0642).

2. CONFIDENTIALITY

The Department may wish to publish responses to this Consultation document. It will certainly, at the end of the consultation period, publish on its website a summary of the responses received.

If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request.

You should also be aware that there may be circumstances in which the Department will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000¹ and the Environmental Information Regulations². The paragraphs below give further information on Freedom of Information which you should read before you submit your response. It contains guidance on the legal position of any information given by you.

2.1. Guidance on the confidentiality of consultation responses

The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority – for the purposes here, the Department of the Environment – which includes information provided in response to a consultation.

However, the Department of the Environment is responsible for deciding whether any information provided in response to a consultation should then either be made public or considered confidential – a decision which extends to information about a consultee's identity.

In practice, this means that information provided by a consultee is unlikely to be regarded as confidential other than in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act 2000 provides that:

- the Department of the Environment should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of its functions and it would not otherwise be provided;

¹ 2000 c. 36

² S.I. 2004/3391

- the Department of the Environment should not agree to hold information received from third parties “in confidence” which is not confidential in nature;
- acceptance by the Department of the Environment of confidentiality provisions must be for good reason and capable of being justified to the Information Commissioner.

For further information about confidentiality or responses, please contact the Information Commissioner’s Office, or see the web-site at:

<http://www.ico.gov.uk>

You may also find the following document useful:

http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detail_ed_specialist_guides/CONFIDENTIALINFORMATION_V4.ashx

3. RESULTS OF INITIAL EQUALITY SCREENING, HUMAN RIGHTS ASSESSMENT AND RURAL PROOFING

3.1. Equality of opportunity

Section 75 of the Northern Ireland Act 1998³ places a duty on public authorities to have due regard to promote Equality of opportunity. The Department has completed an initial Equality Impact Assessment screening exercise in order to identify if any of the proposals included in this consultation will have an impact on the Section 75 groups and has concluded that no adverse differential impact is likely. Further screening will be required as the detailed proposals are developed.

The Department's screening form for this consultation can be accessed at:
http://www.doeni.gov.uk/index/information/equality_unit.htm

3.2. Human Rights assessment

The outline proposals contained in this consultation are considered to be compatible with the Human Rights Act 1998⁴. Again, the position will need to be kept under review during the policy development process.

3.3. Rural proofing

It is considered that there are no negative impacts on rural productivity or the provision of services to the rural community as a result of these proposals.

Question 1: Have you any comments on the Department's preliminary conclusions in relation to equality screening, human rights or rural proofing?

4. REGULATORY IMPACT ASSESSMENT

The Department will be conducting a Regulatory Impact Assessment and will be making the results of this available in due course.

³ 1998 c. 47

⁴ 1998 c. 42

5. INTRODUCTION

In March 2011 the Department consulted on outline proposals for a new policy on waste recycling. Subsequently, in June 2012 the Minister of the Environment announced his intention to introduce a statutory 60% recycling target for local authority collected municipal waste to be achieved by 2020. The Waste Management Strategy, which the Department intends to publish in May 2013, underlines the Minister's commitment to realising this target.

Local authority collected municipal waste (LACMW) is defined in section 21 of the Waste and Emissions Trading Act 2003⁵, as amended by The Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011⁶:

“local authority collected municipal waste” means any municipal waste which is collected under arrangements made by a waste collection authority or a waste disposal authority.

The purpose of this consultation is to outline the Minister's proposal for a 60% statutory recycling rate to be achieved by 2020 and to invite views on the remaining key policy issues that must be resolved prior to the progression of a draft Bill. The Department proposes that the draft Bill will contain broad enabling powers for the regime (i.e. the power to set the level of the target, the power to specify to whom the target will apply etc), with the subordinate legislation providing the detail of the regime for the 60% statutory recycling target. There will be a second consultation in due course on the supporting detailed policy and regulations, underpinned by evidence compiled independently for the Department.

In considering this consultation consultees will wish to keep in mind proposals for the reform of local government by April 2015. The 11 new councils will be:

Antrim and Newtownabbey District, Armagh, Banbridge and Craigavon District, Belfast District, Causeway Coast and Glens District, Derry and Strabane District, Fermanagh and Omagh District, Lisburn and Castlereagh District, Mid and East

⁵ 2003 c. 33

⁶ S.I. 2011 No. 2499

Antrim District, Mid Ulster District, Newry, Mourne and Down District, and, North Down and Ards District.

6. BACKGROUND

6.1. Prior consultation

The Department published a consultation document – *A New Recycling Policy* – in March 2011. The consultation document sets out a new recycling policy for, inter alia, local authority collected municipal waste (then known simply as ‘municipal waste’). It argued that there is potential for Northern Ireland to achieve recycling rates for LACMW in the region of 60% over the next 10 years – assuming that the 50% recycling target for waste from households set in the Waste Framework Directive will be achieved as a key element of the progress towards the LACMW targets.

The consultation document contained several questions relating to the 60% recycling rate:

- Do you think that an aspirational regional target municipal recycling rate of 60% by 2020 is appropriate?
- How can this target be achieved?
- Do you think that targets should be developed at individual council level as well as for Northern Ireland as a whole?
- What are your views on the need for a comprehensive regime of measures, including incentives and sanctions, across all sectors of waste management to encourage the best outcomes?
- What are your views on the Department’s intention to consider giving the targets in this paper a statutory basis as part of a wider landscape of legislative provisions to promote the appropriate management of waste?

The Department received 23 responses to the consultation. The majority of consultees agreed with a 60% or higher target. However, the Waste Management Groups thought that 60% would be too challenging and raised

concerns in relation to different demographic factors, and technological and behavioural changes.

The Department considered these views and concluded that there is scope to achieve recycling rates which go beyond the 50% EU target for waste from households. The Department's analysis underpinning this indicated that achieving a local authority collected municipal recycling rate of 60% by 2020, whilst stretching, is achievable. The Minister therefore subsequently took the decision to introduce a 60% target to be achieved by 2020.

Consultees made a variety of suggestions for achieving the 60% target. These included : add to communication campaigns at Government and local level, improve the existing recycling infrastructure and audit trail, extend producer responsibility in relation to packaging, create a single waste management authority, change the definition of 'municipal waste' or 'recycling', and introduce a 'pay as you throw' system. The Department intends to explore these suggestions fully during the course of the consultation process and the subsequent development of the Recycling Bill and supporting regulations.

On the question of whether the 60% target should be developed at individual council level as well as for Northern Ireland as a whole, councils and one Waste Management Group felt that targets should not be developed at an individual council level. On the other hand some consultees indicated that the target **should** be applied to individual councils. During this consultation period the Department intends to explore who will be the obligated party for the 60% target.

In relation to measures across all sectors of waste management to encourage the best outcomes, there was agreement across all consultees that this should be the way forward, but that sufficient resources should be provided to allow these to be suitably implemented. The Department intends to explore a range of incentives and sanctions as the preferred policy direction is identified.

On whether the 60% target should be statutory, councils, Waste Management Groups and their representative bodies indicated that they were opposed to introducing statutory targets. However, the Department considered the views of stakeholders and concluded that the benefits of a statutory target, such as providing certainty to stakeholders, outweigh the drawbacks.

In summary, having considered the responses received to the 2011 consultation, the Minister took the decision to introduce a statutory recycling target of 60% for LACMW to be achieved by 2020. The policy issues remaining to be resolved relate to the point of application of the target, the definition of recycling and how this is applied in practice, and, the shape of the monitoring and enforcement regime for the legislation. These issues are discussed later in this consultation document.

6.2. Current position in Northern Ireland for recycling

According to the Northern Ireland Local Authority Collected Municipal Waste Management Statistics Annual Report 2011/12⁷ the total amount of LACMW collected in Northern Ireland in 2011/12 was 949, 491 tonnes. Of this waste, 58.1% was landfilled, 38.4% was recycled (22.5 % dry recycled, 15.9% composted), 2.7% was used for refuse derived fuel, and 0.8% was re-used. The amount of waste recycled represents a fourfold increase from 8.9% in 2001/2.

In terms of the performance of individual councils, Magherafelt District Council had the highest LACMW recycling rate at 59.1%; while Belfast City Council had the lowest rate, just under half this proportion, at 26.9%. Table 1 below shows the percentage of LACMW sent for recycling by each council in 2011/12.

Table 1: LACMW sent for recycling & composting, Northern Ireland, 2011/12

Area	LACMW sent for recycling (including composting) as a percentage of LACMW arisings
Arc21	
Antrim	53.2%
Ards	38.2%
Ballymena	38.3%
Belfast	26.9%
Carrickfergus	46.1%
Castlereagh	42.3%

⁷ http://www.doeni.gov.uk/lac_municipal_waste_2011-12.pdf

Down	31.0%
Larne	53.0%
Lisburn	40.0%
Newtownabbey	40.6%
North Down	44.3%
All arc21	37.7%
NWRWVG	
Ballymoney	35.2%
Coleraine	37.8%
Derry	29.8%
Limavady	36.6%
Magherafelt	59.1%
Moyle	38.5%
Strabane	31.7%
All NWRWVG	37.3%
SWaMP 2008	
Armagh	43.4%
Banbridge	53.3%
Cookstown	41.1%
Craigavon	41.0%
Dungannon	39.2%
Fermanagh	37.0%
Newry & Mourne	32.5%
Omagh	42.8%
All SWaMP 2008	40.5%
Northern Ireland	38.4%

7. INTERFACE WITH OTHER WASTE POLICY AREAS

The Department is responsible for a number of policy areas that have the potential to impact on the proposed Recycling Bill and conversely the proposed Bill has the potential to impact on these policies. These other policies will be taken into consideration as the Recycling Bill is developed. The most relevant of these key policies are summarised below.

7.1. Revised Waste Management Strategy

The revised waste management strategy moves the emphasis of waste management from resource management to resource efficiency, and has a

renewed focus on waste prevention and recycling in accordance with the waste hierarchy. Making more efficient use of natural resources and facilitating increased re-use and recycling is also expected to help promote green jobs and have a positive impact on the NI economy. The Strategy contains a target to achieve 60% (including preparing for re-use) of LACMW by 2020, and an action to introduce enabling powers to achieve this target.

7.2. Strategic Waste Infrastructure Programme

The overarching aim of the Strategic Waste Infrastructure Programme is to provide assurance of compliance at NI-wide level with new landfill diversion targets in 2020. Considerable progress has been made in respect of the development by the three Waste Management Groups on behalf of their constituent councils of an integrated network of facilities for the recycling, recovery and disposal of waste within Northern Ireland to meet our statutory obligations. The Gateway Review of the Programme carried out in October 2011 concluded, however, that it was too focused on delivery of the individual Waste Management projects and recommended adopting a more holistic approach to programme delivery.

An update of the Department's 2010 NI-wide analysis of landfill diversion requirements was undertaken to inform the new holistic approach. It concluded that in light of changes across a number of areas, including waste arising, rates of recycling and available merchant capacity, provision of public sector treatment capacity of between 116,000 and 142,000tpa would be sufficient to enable NI to comply with its 2020 statutory landfill diversion obligations. Each of the two residual waste treatment plants currently under procurement is capable of providing this level of capacity on its own. The NI-wide analysis also acknowledges the additional benefits that the Residual Waste Projects may generate by contributing to an increased recycling rate and compliance with any prospective landfill ban.

A revised Programme Plan which takes these factors into account has been adopted by the Department to drive delivery of the Programme aim. At project level, a series of revised milestones has been identified within project

delivery plans and is the basis for monitoring overall progress towards the achievement of Programme milestones so that the Waste Infrastructure Programme as a whole can be delivered within the necessary timescale.

7.3. Statutory recycling targets already in place in Northern Ireland

With the transposition of the suite of EU producer responsibility directives Northern Ireland has had statutory recycling targets for specific waste streams – packaging, end of life vehicles, waste electrical and electronic equipment and batteries - in place for over 10 years. In each of these waste streams the minimum recycling rates, many of which are well above 60%, have been achieved and exceeded.

Most recently, the Waste Regulations (Northern Ireland) 2011⁸ transposed the requirements of the revised Waste Framework Directive in Northern Ireland. The Regulations require the Northern Ireland Waste Management Strategy to include certain policies in relation to recycling including measures to be taken to ensure that by 2020, at least 50% by weight of waste from households is prepared for re-use or recycled. According to the Northern Ireland LACMW Management Statistic Annual Report 2011/12, 39.7% of household waste was sent for recycling (including composting).

The Department, in taking decisions on the policy issues to be resolved and in bringing forward the legislation required to introduce the statutory 60% recycling target for LACMW will take appropriate steps to ensure that that this regime is complementary to the existing regimes.

8. DEPARTMENT SUPPORT FOR INCREASING RECYCLING RATES

Over the last number of years the Department has introduced a raft of measures to support increased recycling. Most recently, the Rethink Waste campaign and programme commenced in March 2010. Rethink Waste consists

⁸ S.R. 2011 No. 127

of several key elements that deliver communications, technical advice and funding to promote waste prevention and recycling. These are:

- Rethink Waste Communications Action Plan, including an advertising campaign,
- Rethink Waste Capital Fund, provision of capital grants to local councils and Waste Management Groups,
- Rethink Waste Revenue Fund, provision of revenue grants to local councils, Waste Management, private sector and the Third sector, and
- The WRAP Northern Ireland Programme, including technical advice, research, business support and communications.

The amount of budget allocated in the last three years is summarised in table 2 below.

Table 2: Budget allocated in the Rethink Waste Programme

Year	Rethink Waste Communications	Rethink Waste Capital Fund	Rethink Waste Revenue Fund	WRAP NI Programme
2010/11	£600k	£4.38M	£240k	£1M
2011/12	£340k	£1.019M	£566k	£692k
2012/13	£226k	£2.15M	£367k	£787k
Total	£1.166M	£7.549M	£1.173M	£2.479M

In total, £12.367M has been spent on waste prevention and recycling promotion and activities in the last 3 years. The Department will consider further measures it can take to support increasing recycling towards the 60% target, as the shape of the regime becomes known.

9. WASTE STRATEGY TASK GROUP

In 2012 the Waste Programme Board established a Task Group, comprising individuals from the Board with additional members from relevant sectors within the waste management industry. The remit of the Task Group was to provide input into the review of the NI Waste Management Strategy and report their findings to the Waste Programme Board. The Task Group was asked to focus on two specific areas, one of which was the introduction of a statutory 60% recycling target for LACMW.

The Task Group was asked to, as a minimum, explore options and develop proposals on how best to introduce the 60% target, on what regulatory and enforcement measures may be necessary, and explore options surrounding the possibility of incentivising versus punitive measures. The Group was also asked to explore options and develop proposals regarding what waste the target will relate to in terms of waste origin and collection methods.

The terms of reference for the Task Group also indicated that full consideration should be given to all relevant, available information, including any existing research on policy proposals for setting higher recycling targets and introducing landfill restrictions, as well as any available research on materials and markets as appropriate. Full consideration should be given to Waste Framework Directive requirements, other EU requirements (both current and on the horizon), and any arrangements set in other jurisdictions including within ROI, other devolved administrations and other Member States. They also required the Group to produce a report of the findings, including recommendations on how to take forward these policy interventions.

In producing its report the Task Group presented its findings in three chapters. Two of these, on the recycling target, and on incentives and sanctions, are relevant to this consultation. The report highlighted a number of options and issues for consideration by the Department, summarised in table 3 below. The Department will explore these options and issues in the course of the consultations on and development of the legislation for the 60% statutory recycling target.

Table 3: Summary of options and issues for consideration in the Waste Strategy Task Group Report

<p>Recycling target – summary of options and issues for consideration</p>
<ul style="list-style-type: none"> • Further consideration should be given to the relationship between the statutory recycling targets within the various producer responsibility regimes. • The Department should consider two options for the introduction of the target into Northern Ireland; a single target for 2020 or an incremental approach up to 2020 with interim targets which may or may not be statutory. • Two options have been identified in terms of application of the target. These are a disaggregated approach whereby the same target would apply to all obligated parties or an aggregated approach whereby different targets summing to 60% would be applied to obligated parties. • There were four options identified in relation to the obligated parties, namely; a Single Northern Ireland wide waste disposal authority (new structure), Sub-regional waste disposal authorities (new structure), Councils (Post RPA), and All Producers of Local Authority Collected Municipal Waste (e.g. households, businesses). • Northern Ireland should develop its own interpretation of the guidance issued on key provisions of the revised Waste Framework Directive, perhaps using the Welsh example as a starting point. • The Department should positively consider enabling the outputs from a range of Energy from Waste facilities to count towards the target. • The Department should consider whether home composting, abandoned vehicles and tyres should count towards the target. • The position regarding poorly sorted material delivered from Material Recovery Facilities (MRFs) and the subsequent removal of contamination by reprocessors also requires careful consideration. • In light of the outcome of the current consultation the Group would encourage early progress on the provision of the associated guidance.
<p>Incentives and sanctions - summary of options and issues for consideration</p>
<ul style="list-style-type: none"> • Four options or levels have been identified for the introduction of incentives or sanctions. These are: at a Northern Ireland wide level, at a sub-regional level, at an individual council level or at a householder level. • There will be the need for a change in law to permit the target and

hence the sanctions to be introduced as statutory at either a Northern Ireland or a sub-regional level.

- Application of the regime at a local householder/user level may present additional challenges and operational issues.
- The preference would be for the emphasis to be placed on incentives rather than penalties.
- In terms of fairness and equality the Department will need to consider exceptions and relaxations due to a number of factors.
- Further detailed analysis will be required to realise the true picture of each defined constituency to which sanctions or incentives may be applied.
- It will be necessary for the Department to carry out an economic appraisal, cost-benefit analysis and carbon balance on the application of any scheme for sanctions or incentives.
- A number of cost factors need to be taken into consideration once the appropriate scheme has been determined.
- Implications associated with data protection and security will need to be taken into consideration in any scheme design.
- Schemes should be designed to allow flexibility in the application of potential penalties.

10. WELSH STATUTORY TARGET FOR LACMW

10.1. Background

Wales introduced a statutory recovery (recycling, composting and preparation for re-use) target in 2010 through the Waste (Wales) Measure 2010⁹.

Effectively the target covers all of the waste that is collected by a local authority in Wales. The Welsh target is stepped, with 52% to be achieved in 2012/13, rising to 58% in 2015/16, 64% in 2019/20 and 70% in 2024/25. Welsh local authorities are on target to meet the first statutory target.

Given that the Welsh statutory recovery target has been implemented and good progress is being made, the Department considers it useful to reflect on

⁹ 2010 NAWM 8

the Welsh regime and to seek views on its application in Northern Ireland. A summary of the provisions contained in the Welsh Measure is set out in the following paragraphs, followed by consultation questions.

The 2010 Waste (Wales) Measure establishes the statutory targets and provides Welsh Ministers with the power to establish:

- other waste targets to be met by local authorities, and,
- to establish financial penalties which could be imposed on local authorities in the event that they fail to meet targets set under the Measure.

The Measure clarifies that the target levels established in particular years continue to apply to subsequent years until a new target level is established, e.g. the 52% target established in 2012/13 will also apply to 2013/14 and 2014/15. The Measure gives the Welsh Ministers the power to vary, through subordinate legislation, the amount of financial penalty to be imposed for failure to meet the recovery targets. The Measure also gives Welsh Ministers the power to amend the statutory targets, or the years to which these targets apply.

The Measure provides the Welsh Ministers with a power to make provision by order to establish whether waste is recycled; prepared for re-use; or composted for the purposes of the statutory targets. The power is also given to specify by order other waste that may be included in the definition of local authority municipal waste for the statutory targets.

The Welsh Measure provides the Ministers with a power to make provision by regulations about monitoring and auditing compliance with the statutory targets including the method of assessing compliance, the arrangements for monitoring and auditing, powers of entry and inspection for those auditing compliance, a requirement for local authorities to maintain records and provide information, and the publication of information in relation to the targets.

The Measure gives Welsh Ministers a regulation-making power to impose penalties on local authorities for failure to meet the statutory targets. This

includes the power to specify the amount of penalty and rules for calculating the amount of penalty.

Question 2: What modifications would be required to this approach to deliver a workable regime in Northern Ireland for a statutory 60% recycling target for LACMW to be achieved by 2020?

The 2010 Measure is underpinned by the Recycling, Preparation for Re-use and Composting Targets (Definitions)(Wales) Order 2011¹⁰, the Recycling, Preparation for Re-use and Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011¹¹ and supporting guidance. The Order fleshes out the key definitions – recycling, preparation for re-use and composting – see table 4 below.

Table 4: Definitions in the Recycling, Preparation for Re-use and Composting Targets (Definitions)(Wales) Order 2011

<p>Recycling</p> <p>3.—(1) Local authority municipal waste is recycled for the purpose of the targets when—</p> <p>(a)the waste has undergone a reprocessing recovery operation; and</p> <p>(b)the waste is reprocessed into a product, material or substance, whether for its original or other purpose.</p> <p>(2) But local authority municipal waste is not recycled for the purposes of the targets if it is used for fuel or for backfilling operations.</p> <p>(3) In this article, a “backfilling operation” means an operation where waste is used for reclamation purposes in excavated areas or for engineering purposes in landscaping.</p>
<p>Preparation for Re-use</p>

¹⁰ S.I. 2011/551 (W.77)

¹¹ S.I. 2011/1014 (W. 152)

4.—(1) Local authority municipal waste is prepared for re-use for the purpose of the targets when—

(a) a waste product or component of a waste product has undergone a checking, cleaning or repairing recovery operation; and

(b) the waste product or component of a waste product can be re-used for its original purpose.

Composting

5.—(1) Local authority municipal waste is composted for the purpose of the targets when—

(a) biodegradable waste has undergone a recovery operation of composting or anaerobic digestion; and

(b) the waste has been reprocessed into a product, material or substance that is capable of use as a soil conditioner, fertiliser or growing medium.

(2) In this article, “composting” means the biological treatment of waste where the decomposition and stabilisation of the waste is achieved through microbial activity from an aerobic process.

(3) In this article, “anaerobic digestion” means the biological treatment of waste where the decomposition and stabilisation of the waste is achieved through microbial activity from an anaerobic process

Question 3: Are the definitions contained in the Welsh Order suitable for the proposed regime to introduce a statutory 60% recycling target for LACMW (to be achieved by 2020) in Northern Ireland?

The Regulations made under the Waste Measure appoint the Environment Agency as the monitoring authority for the targets in the Measure. They require local authorities to collect information on, maintain records about, and submit data on their municipal waste, using WasteDataFlow. They give Welsh

Ministers and the Environment Agency the power to require further information from a local authority in relation to the targets in the Measure. The Regulations require the Environment Agency to validate information supplied by the local authorities and provide the information to Welsh Ministers to allow them to assess compliance.

The Regulations set out the amount of financial penalty that a local authority is liable to pay if it fails to meet the statutory targets - £200 for each tonne by which a local authority falls short of the target amount. They also set out the amount of financial penalty - £1000 - that a local authority is liable to pay if it fails to keep records, submit data or comply with requests for additional data. The Regulations allow Welsh Ministers to waive a penalty and set out the practical arrangements for payment of the penalty and interest accrued.

Question 4: Given that a monitoring regime will be necessary to ensure that the 60% statutory recycling target is achieved in Northern Ireland, is it sensible to follow the approach taken in Wales and utilise the existing WasteDataFlow system, with suitable adjustments, as the reporting mechanism for the monitoring system in NI?

Question 5: The proposed regime to introduce a statutory 60% recycling target for LACMW in Northern Ireland will require both incentives and penalties. Thinking about penalties, do you think that the amounts of financial penalties in the Welsh legislation, applied in the new NI regime, would act as sufficient incentive to encourage compliance with the NI legislation for the 60% statutory target?

10.2. Explanatory Memorandum to the Waste Measure

In bringing forward the Waste Measure, the Welsh Assembly Government commissioned a number of independent reports on waste composition, modelling of options and a cost-benefit analysis, enabling it to produce a comprehensive regulatory impact assessment in the Explanatory

Memorandum to the Waste Wales Measure 2010¹². The following paragraphs, extracted from the impact assessment in the Explanatory Memorandum summarise the conclusions of the cost modelling exercise, which looked at both financial costs and environmental costs.

10.2.1. Financial costs

Costs were modelled for two cost sensitivities:

1. Social costs (weighted average costs of capital set equal to the discount rate 3.5%, all taxes and subsidies excluded i.e. landfill taxes are not taken into account as they are regarded as transfer payments); and
2. Private costs (taxes and subsidies included, weighted average cost of capital reflecting figures typical of the private sector in this area).

Under HM Treasury's Green Book guidance, greater weighting should be attached to the social costs as this is the metric that is used in government decision making. Private costs are relevant to affordability, which is particularly important from the perspective of local authorities in relation to landfill tax.

10.2.2. Environmental costs

The modelling of environmental benefits has been based upon work undertaken by Eunomia on behalf of Defra and the devolved administrations which looks at the costs and benefits of landfill bans in the UK. The environmental costs have been assessed in line with HM Treasury and Defra Guidance. The main impacts which have been monetised are:

- Changes in greenhouse gas emissions;
- Changes in conventional air pollutants; and
- Changes associated with the application of compost / digestate to land.

10.2.3. Net social costs

¹² <http://www.assemblywales.org/ms-ld7924-em-e.pdf>

Net social costs are the sum of the financial and the environmental costs. These are shown in Table 5. Properly, from the perspective of a cost benefit analysis, the sum of the two should only be considered where the costs are estimated through the social metric. However, for transparency, results for both the private and social metrics are set out, not least because impact assessments generally seek information regarding 'market costs'. It should be noted that the costs assessed under the private metric include the effects of measures such as landfill tax and the renewables obligation which are designed to internalise some of the environmental costs / benefits associated with specific activities. As such, adding the environmental costs to the financial costs under the private metric implies an element of double counting of environmental benefits.

The results of the modelling indicate significant reductions in net social costs (or significant social benefits) for both social and private cost metrics arising from a realisation of the Welsh Assembly Government's recycling targets relative to the baseline scenario (that municipal waste recycling rates peak and plateau at 52% in 2012/13). Under the social cost metric, there is very little difference in the net social benefits between the case where the residual waste is landfilled and where it is incinerated. The reasons for this are clear to see from the Table: the financial costs are higher where the avoided management route is landfill, but this is offset by greater environmental benefits. Avoiding incineration, on the other hand, incurs lower additional costs, but also, less environmental benefit. The net position is similar for the two treatment options.

Evidently, looking at the private cost metric, it appears that the overall benefits to society are greater in the scenario where the additional material recycled would otherwise have been landfilled, than if it were otherwise incinerated. This is, however, somewhat artificial, since it merely reflects the fact that the environmental costs of landfilling are far more effectively internalised in current market prices than are the externalities of incineration. In other words, the landfill case includes a high degree of double counting of the environmental benefit from avoiding landfill.

Table 5: Financial, environmental and net social costs (where environmental costs reflect anaerobic digestion to electricity only)

	Social costs		Private costs	
	Avoided disposal as landfill	Avoided disposal as incineration	Avoided disposal as landfill	Avoided disposal as incineration
NPV 2009/10 – 2024/25				
Financial costs	£35,894,377	£7,801,984	-£40,234,261	-£38,269,539
Environmental costs	-£102,917,391	-£71,656,164	-£102,917,391	-£71,656,164
Net social costs	-£67,023,015	-£63,854,180	-£143,151,652	-£109,925,703
Annualised NPV				
Financial costs	£2,967,920	£645,106	-£3,326,763	-£3,164,310
Environmental costs	-£8,509,707	-£5,924,878	-£8,509,707	-£5,924,878
Net social costs	-£5,541,787	-£5,279,772	-£11,836,470	-£9,089,188

Question 6: The above analysis indicates an overall benefit to society through the introduction of the Welsh regime to introduce statutory recovery targets. Do you think that the introduction of the 60% statutory target in Northern Ireland is likely to have a similar outcome?

Question 7: What Northern Ireland data is required prior to the introduction of the 60% statutory target in Northern Ireland to demonstrate what the overall benefit to society in Northern Ireland is?

11. NORTHERN IRELAND EVIDENCE GAP

In taking the decision to introduce a statutory 60% recycling target for local authority collected municipal waste to be achieved by 2020, the Minister highlighted the need for the Department to gather additional evidence to justify the specific details in respect of the target.

Accordingly, the Department intends to examine and bring forward options for an independent analysis of waste composition in Northern Ireland and lifecycle analysis of LACMW to inform the detail of the legislation and supporting regulatory impact assessment (to include a cost-benefit analysis and consideration of socio economic factors). This work will be developed alongside the development of the Recycling Bill, following the outcome of this consultation. It will then be summarised in a further consultation; this consultation will also include the draft regulations containing the detailed provisions in respect of the 60% statutory target.

Question 8: Do you or your organisation wish to be involved in, as appropriate, the data gathering exercise that will underpin this work?

Question 9: What are the main factors that need to be considered in taking this work forward?

Question 10: Are there existing sources of evidence that would be useful for this work?

12. PROPOSED NORTHERN IRELAND LEGISLATIVE FRAMEWORK

The Department proposes that the draft Bill will contain broad enabling powers, with the subordinate legislation providing the detail of the regime for the 60% statutory recycling target. In this way the draft Bill will give the Department the power, exercisable through Regulations to:

- define the quanta and timeframe(s) for statutory recycling target(s),
- define to whom the statutory duty will apply,
- define 'recycling',
- determine what may be considered to be 'recycled', and
- specify monitoring and enforcement arrangements.

The Assembly control for the detailed Regulations will be draft affirmative, providing the opportunity for the Assembly to debate the detail at the subordinate legislation stage. It will also give the Department the opportunity to conduct further research to demonstrate that the specific targets contained in subordinate legislation are evidence-based.

In addition, this approach allows for future-proofing. Changes in factors such as waste composition, private sector increasing its share of collection of recyclates, the forthcoming review of the targets in the Waste Framework Directive or other changes to EU legislation and guidance may be taken account of through subordinate legislation - without the need to produce amending primary legislation. It also allows for flexibility in dealing with any socio-economic factors that come to light through data analysis or regulatory impact assessment.

The Department intends to develop, in tandem with progression of the primary legislation, the detailed policy to underpin the subordinate legislation. This should help ensure that the subordinate legislation is introduced as soon as practicable after the primary legislation is in place. This means that there will be a further consultation on the draft Regulations and supporting policy proposals.

The Department proposes to introduce the Bill into the Assembly in early 2014. The regulations will be made as soon as practicable after the Bill has completed its legislative passage.

Question 11: Do you agree with this approach to the development of the Northern Ireland framework?

13. KEY POLICY ISSUES

The key policy issues to be resolved are those surrounding the point of application of the target, the definition of recycling and how this is applied in practice, and, the proposed monitoring and enforcement regime for the legislation. Once the legislative framework is fixed further work will be carried out on how to incentivise recycling so that the targets are achieved.

13.1. Point of application of the target

In considering the point of application of the target the Waste Strategy Task Group looked at whether there should be a single or stepped target, whether or not the same target should apply to all obligated parties, and, who the obligated party should be.

13.1.1. Single target versus stepped interim targets

The report produced by the Waste Strategy Task Group identified two options for the introduction of the 60% statutory target in Northern Ireland – a single target to be reached in full by 2020, or stepped interim targets, which may or may not be statutory, up to 2020.

The Department considers that adopting a stepped target approach allows progress towards the 60% target to be measured. However, given that the legislation will not be in place until early 2015 giving a lead in time of 5 years to meet the target, the Department proposes not to make these steps statutory.

Question 12: Do you think that adopting a non-statutory stepped approach for the 60% target is useful?

Question 13: Do you agree with this approach?

13.1.2. Application of the target

The report produced by the Waste Strategy Task Group identified two options for the application of the target in Northern Ireland:

- Disaggregated approach – the same 60% target would apply to all obligated parties
- Aggregated approach – different targets would apply to different obligated parties which, when aggregated together, would deliver the 60% target

The report also indicated that in cases involving more than one obligated party consideration should be given to a transfer or trading scheme.

The main advantages of the disaggregated approach are:

- Simplicity, and,
- If the decision is taken to make individual councils the obligated parties, this approach is in line with that taken for the 50% recycling target for waste from households

The main disadvantage is:

- this doesn't take account of councils' individual baseline recycling rates or relevant socio-economic factors.

Conversely, the advantage of the aggregated approach is that it could be used to take account of councils' individual baseline recycling rates or relevant socio-economic factors – although this would make the regime more complex and at odds with the approach taken for the 50% waste from households target.

Given that the Department intends to examine and bring forward options for an independent analysis of waste composition in Northern Ireland and lifecycle analysis of LACMW to inform the detail of the legislation and supporting regulatory impact assessment, the Department considers it prudent to defer the decision on this policy element until this body of work has been completed and the outcome of this consultation is known. Further consideration of the advantages and disadvantages of a transfer or trading scheme will also be considered at this time.

Question 14: What are the advantages and disadvantages of the disaggregated and aggregated approach?

Question 15: What is your preferred approach?

13.1.3. Obligated parties

The report produced by the Waste Strategy Task Group identified four options for the obligated parties for the 60% target in Northern Ireland:

- Producers of LACMW (PLACMW), e.g. householders and businesses
- Councils
- Sub-regional waste disposal authorities (following the implementation of the Department's proposals for the reform of local government by April 2015)
- Single Northern Ireland-wide waste disposal authority (following the implementation of the Department's proposals for the reform of local government by April 2015)

In examining these options the Department constructed likely scenarios for each option and considered the advantages and disadvantages in each instance. For all four options it has been assumed that the disaggregated approach is taken, i.e. the same 60% target applies to the obligated party, given that the Department intends to gather further evidence to inform its

decision on the merits of the aggregated approach versus disaggregated approach.

13.1.3.1. Producers of LACMW (PLACMW), e.g. householders and businesses

In this scenario the legislation would place an obligation on individual PLACMW to each achieve a 60% recycling rate by 2020. PLACMW would have to be provided with adequate facilities to enable them to meet the target, whilst councils' and waste operators' infrastructure would need to be capable of achieving high recycling rates to ensure the target can be met. Kerbside collections would need to be weighed by councils and attributed to individual PLACMW, and there would need to be a system at bring sites where waste is weighed and attributed to PLACMW. This data would need to be aggregated for each PLACMW and records kept.

A comprehensive communications campaign would be necessary to ensure PLACMW are aware of and understand their obligations. PLACMW would be encouraged to increase their recycling rates through education and incentive schemes. Councils would be responsible for monitoring the collection and bring facilities and ensuring low levels of contamination. The legislation could provide enforcement measures such as fixed penalty notices and fines to be used where PLACMW are non-compliant (e.g. failure to separately collect waste, contamination of recyclates, failure to meet 60% target).

This option lends itself to the introduction of a 'pay as you throw' system, the revenue from this could be used to finance enhancement of infrastructure, communication campaign, and education and incentive schemes.

Advantages to this approach:

- This scenario provides tangible responsibility for the PLACMW, who are legally and personally responsible for their actions at the point of discarding their waste.

- This may be viewed as an equitable system. Each PLACMW is individually responsible for achievement of 60% target.
- The scenario provides an effective incentive for encouraging PLACMW to separate recyclates.
- The revenue raised could be used to finance infrastructure, communications, education and incentive schemes and for improvements to the environment.

Disadvantages to this approach:

- PLACMW have no control over the recycling infrastructure or recycling rate achieved at recycling facilities. They therefore have no way of increasing their own recycling rate except by maximising separation of recyclates.
- PLACMW are not waste management experts. This option would not place a statutory obligation on councils – responsible for collection and recycling - to meet the 60% target.
- It is likely that this approach would only measure percentage materials **presented** for recycling and would not place an obligation on councils to ensure that the materials are actually recycled. This would be a completely different approach than for that taken for the other statutory recycling targets.
- This may be viewed as an overly burdensome system. Each PLACMW's waste and recycling needs to be weighed, the data collected, and monitored and audited. A large scale monitoring and enforcement system would need to be put in place.
- There would be high start up costs for this scenario, though the implementation of a 'pay as you throw' system could off-set this to some extent.
- There may be unintended consequences with this scenario. There may be increased contamination rates in recyclate receptacles in a bid to meet targets and avoid enforcement measures.
- This approach does not appear to promote a partnership approaching to increasing recycling rates.

- This approach does not take account of variations in waste composition, waste arisings per head or household, demographics (profile of the makeup of the population), equality, population size, deprivation level, housing types, urban or rural setting.

Question 16: Do you agree with the advantages and disadvantages listed for this scenario?

Question 17: What further advantages and disadvantages are there?

13.1.3.2. Councils

In this scenario the legislation would place an obligation on individual councils to achieve a 60% recycling rate for LACMW by 2020. Councils' collection and recycling infrastructure would need to be sufficient to ensure a 60% recycling rate by 2020. Councils' data would be submitted through the WasteDataFlow system. There would need to be a mixture of communications campaigns, education and incentive schemes which could run at national level and also tailored for and by each council to encourage PLACMW to achieve maximum levels of separate collection.

Councils would be responsible for monitoring the separate collection of recycle and ensuring low levels of contamination. The legislation could provide enforcement measures such as enforcement notices and fines, where councils are non-compliant (e.g. failure to meet 60% target, failure to ensure low levels of contamination, failure to supply data).

Advantages to this approach:

- The Councils – the bodies obligated for collection and recycling of LACMW - are made legally responsible for achieving the 60% target.
- This gives individual councils – the experts in waste collection and recycling - the greatest degree of autonomy. They can decide on their own implementation plan as to how to get from their baseline recycling rate to the 60% recycling rate in 2020. Individual councils can decide

how the target will apply in their council area so that it aggregates to 60%. Individual councils can closely monitor their own progress and respond quickly where changes to their implementation plans are required.

- This approach could incorporate taking account of variations in waste composition, waste arisings per head or household, demographics (profile of the makeup of the population), equality, population size, deprivation level, housing types, urban or rural setting.
- Derogation could be provided for those councils starting from a lower baseline recycling rate in the legislation. The legislation could, for instance, give a longer time to achieve the target for those councils that are below the NI recycling rate for the year prior to the making of the new legislation. The legislation could also, similar to the Welsh Waste Measure, give the Minister the power to waive fines in certain circumstances, e.g. if appropriate effort has been made to progress towards the target.
- Recycling will increase and this option is one of the most likely to achieve the 60% target since those with the most control over the 'recycling system' – i.e. individual councils - have the statutory obligation to achieve the recycling target.

Disadvantages to this approach:

- Depending on the findings from the evidence to be commissioned by the Department, and unless derogation is provided where necessary, this approach may be deemed inequitable.
- This option does not actively promote a partnership approach across councils to increasing recycling rates.

Question 18: Do you agree with the advantages and disadvantages listed for this scenario?

Question 19: What further advantages and disadvantages are there?

13.1.3.3. Sub-regional Waste Disposal Authorities (SWDAs)

The legislation would place an obligation on SWDAs to achieve a 60% recycling rate for LACMW by 2020. The SWDAs would be formed through consensus being reached amongst groups of councils, as has been the case for the three existing groups – arc21, SWaMP 2008 and NWRWMG. Section 19 of the Local Government Act (Northern Ireland) 1972¹³ allows for councils to form joint committees for any purpose for which they are jointly interested. Section 19 of the 1972 Act also gives the Department the power to constitute a joint committee a body corporate and to fix the functions of the body corporate by order, as was the case for arc21 and SWaMP 2008.

In this scenario councils' collective collection and recycling infrastructure would need to be sufficient to ensure a 60% recycling rate by 2020. There would need to be a mixture of communications campaigns, education and incentive schemes tailored both at and for each council to encourage councils and PLACMW to achieve maximum levels of separate collection. Councils would be responsible for monitoring the separate collection and ensuring low levels of contamination. Councils' data would be submitted through the WasteDataFlow system. There would also need to be an additional layer of monitoring where councils submit data to the SWDAs. The legislation could provide enforcement measures such as enforcement notices and fines, where councils or SWDAs are non-compliant (e.g. failure to meet 60% target, failure to ensure low levels of contamination, failure to supply data).

Advantages to this approach:

- Increased recycling costs will be offset to some degree by a decrease in landfill costs. Some additional costs will be incurred by setting up the additional layer of monitoring and the SWDAs.

¹³ 1972 (C.9)

- The SWDAs would have autonomy, if given appropriate legislative powers, and could decide on their implementation plan as to how to get from their baseline recycling rate to the 60% recycling rate in 2020. SWDAs can decide how the target will apply in their council areas so that it aggregates to 60%. The SWDAs and individual councils can closely monitor their own progress and respond quickly where changes to their implementation plans are required.
- This approach could incorporate taking account of variations in waste composition, waste arisings per head or household, demographics (profile of the makeup of the population), equality, population size, deprivation level, housing types, urban or rural setting.
- Derogation could be provided for those councils starting from a lower baseline recycling rate in the legislation. The legislation could, for instance, give a longer time to achieve the target for those councils that are below the NI recycling rate for the year prior to the making of the new legislation. The SWDAs target would reflect any derogation given. The legislation could also, similar to the Welsh Waste Measure, give the Minister the power to waive fines in certain circumstances, e.g. if appropriate effort has been made to progress towards the target.
- This could strengthen partnership working between councils.

Disadvantages to this approach:

- The key stakeholders – councils – would not be legally responsible for meeting the target. SWDAs have no power of direction over the councils and limited control over councils’ infrastructure (unless they are given the power to do so in the legislation). SWDAs may have no way of increasing the recycling rate except by influencing key stakeholders.
- SWDAs will have to be formed following the implementation of the proposals for the reform of local government by April 2015. The time taken to set the new arrangements in place is likely to impact on the ability to reach the 60% recycling target by 2020.

- This approach may be view as adding an additional unnecessary layer of bureaucracy to a system that is already successfully increasing recycling rates.

Question 20: Do you agree with the advantages and disadvantages listed for this scenario?

Question 21: What further advantages and disadvantages are there?

Question 22: Looking at all of the scenarios above, do you consider that the ideal scenario is to have two or more parties responsible for achieving the 60% target?

Question23: How would this work in practice?

13.1.3.4. Single Northern Ireland-wide Waste Disposal Authority (WDA)

The legislation would place an obligation on WDA to achieve a 60% recycling rate for LACMW by 2020. The WDA could be formed through consensus being reached amongst councils to form a joint committee and by the Department constituting the joint committee a body corporate, as in the scenario above for SWDA. Alternatively, such a body would be formed without the consensus of councils through primary legislation.

In either scenario councils' collection and recycling infrastructure would need to be sufficient to ensure a 60% recycling rate by 2020. There would need to be a mixture of communications campaigns, education and incentive schemes tailored both at and for each council to encourage councils and PLACMW to achieve maximum levels of separate collection. Councils would be responsible for monitoring the separate collection and ensuring low levels of contamination. Councils' data would be submitted through the WasteDataFlow system. There would also need to be an additional layer of monitoring where councils submit data to the WDA. The legislation could provide enforcement measures such as enforcement notices and fines, where

councils or WDA are non-compliant (e.g. failure to meet 60% target, failure to ensure low levels of contamination, failure to supply data).

Advantages to this approach:

- Increased recycling costs will be offset to some degree by a decrease in landfill costs. Some additional costs will be incurred by setting up the additional layer of monitoring and the WDA.
- The WDA would have autonomy, if given appropriate legislative powers, to determine its implementation plan for moving from its baseline recycling rate to the 60% recycling rate in 2020. The WDA can decide how the target will apply in council areas so that it aggregates to 60%. The WDA and individual councils can closely monitor their own progress and respond quickly where changes to their implementation plans are required.
- This approach could incorporate taking account of variations in waste composition, waste arisings per head or household, demographics (profile of the makeup of the population), equality, population size, deprivation level, housing types, urban or rural setting.
- Derogation could be provided for those councils starting from a lower baseline recycling rate in the legislation. The legislation could, for instance, give a longer time to achieve the target for those councils that are below the NI recycling rate for the year prior to the making of the new legislation. The WDA target would reflect any derogation given. The legislation could also, similar to the Welsh Waste Measure, give the Minister the power to waive fines in certain circumstances, e.g. if appropriate effort has been made to progress towards the target.
- This could strengthen partnership working between councils.

Disadvantages to this approach:

- If the WDA is formed by voluntary agreement – rather than in compliance with a statutory obligation it would have no power of direction over the councils and limited control over councils’

infrastructure. The WDA may have no way of increasing the recycling rate except by influencing key stakeholders.

- The WDA will have to be formed following the implementation of the proposals for the reform of local government by April 2015. The time taken to set the new arrangements in place is likely to impact on the ability to reach the 60% recycling target by 2020. Setting the new arrangements in place is likely to take longer than for the sub-regional scenario as primary legislation is likely to be required.
- This approach may be viewed as adding an additional unnecessary layer of bureaucracy to a system that is already successfully increasing recycling rates.

Question 24: Do you agree with the advantages and disadvantages listed for this scenario?

Question 25: What further advantages and disadvantages are there?

Question 26: Looking at all of the scenarios above, which of these, or any alternative, would be your preferred option?

Question 27: How would the preferred option that you have identified work in practice?

As proposed in section 12, the Department proposes that the draft Bill will contain a broad enabling power to allow the Department to specify the obligated party/parties by regulations. The regulations will be the subject of a further consultation.

13.2. Definition of 'recycling'

In considering options for the legal definition of 'recycling' in respect of the 60% statutory target the Department has considered two options. These are the definition of 'recycling' contained in regulation 1(3) of the Waste

Management Licensing Regulations (Northern Ireland) 2003¹⁴ and the definition of ‘recovery’ (which incorporates recycling, preparation for re-use and composting) in the Recycling, Preparation for Re-use and Composting Targets (Definitions) (Wales) Order 2011¹⁵.

13.2.1. Definition in the Waste Management Licensing Regulations (Northern Ireland) 2003

The definition of ‘recycling’ in the 2003 Regulations, as amended, is:

“recycling” —

- (a) in relation to WEEE, has the meaning given by Article 3(e) of the WEEE Directive;
- (b) in relation to waste batteries or accumulators, means the reprocessing in a production process of waste materials for their original purpose or for other purposes, but excluding energy recovery;
- (c) in relation to any other waste, means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;

The benefits of relying on this definition are that it is consistent with EU requirements and existing domestic legislation for statutory recycling targets. There is a high level of understanding of this definition and stakeholders are already well used to working with it. In addition the collection and recycling infrastructure, data collection and recording system and monitoring and enforcement system already in place in Northern Ireland is largely consistent with this definition.

¹⁴ S.R. 2003 No.493 as amended by S.R. 2003 No.496. S.R. 2005 No. 300, S.R. 2006 No. 280, S.R. 2006 No, 489, S.R. 2006 No 519, S.R. 2007 No.258, S.R. 2008 No. 18, S.R.2009 No.159, S.R. 2009 No.178, S.R 2010 No.84 and S.R. 2011 No. 127.

¹⁵ S.I. 2011/551 (W. 77)

The main drawback of relying on this definition is that it does not take account of preparation for re-use activities undertaken by councils where 'preparation for re-use' means 'checking, cleaning or repairing recovery operations, by which products or components of products that have become waste are prepared so that they can be re-used without any other pre-processing'. By not taking account of preparation for re-use activities there could be an unintended consequence of councils promoting recycling over preparation for re-use, the latter of which is higher in the waste hierarchy.

Question 28: Do you consider this definition as it stands as suitable for the regime surrounding the 60% statutory target?

Question 29: Do you think this definition should be modified to include preparation for re-use?

13.2.2. Definition in the Recycling, Preparation for Re-use and Composting Targets (Definitions) (Wales) Order 2011

In this option the Department would use the definition of 'recovery' in the 2011 Order as the legal definition of 'recycling' for 60% target. The three elements that make up the definition of 'recovery' are defined as:

Recycling

Local authority municipal waste is recycled for the purpose of the targets when—

(a) the waste has undergone a reprocessing recovery operation; and
(b) the waste is reprocessed into a product, material or substance, whether for its original or other purpose.

(2) But local authority municipal waste is not recycled for the purposes of the targets if it is used for fuel or for backfilling operations.

(3) In this article, a “backfilling operation” means an operation where waste is used for reclamation purposes in excavated areas or for engineering purposes in landscaping.

Preparation for Re-use

4.—(1) Local authority municipal waste is prepared for re-use for the purpose of the targets when—

- (a) a waste product or component of a waste product has undergone a checking, cleaning or repairing recovery operation; and
- (b) the waste product or component of a waste product can be re-used for its original purpose.

Composting

5.—(1) Local authority municipal waste is composted for the purpose of the targets when—

- (a) biodegradable waste has undergone a recovery operation of composting or anaerobic digestion; and .
- (b) the waste has been reprocessed into a product, material or substance that is capable of use as a soil conditioner, fertiliser or growing medium.

(2) In this article, “composting” means the biological treatment of waste where the decomposition and stabilisation of the waste is achieved through microbial activity from an aerobic process.

(3) In this article, “anaerobic digestion” means the biological treatment of waste where the decomposition and stabilisation of the waste is achieved through microbial activity from an anaerobic process.

The benefits of relying on this definition are that it encompasses preparation for re-use, meaning that there is not the unintended consequence of councils promoting recycling over preparation for re-use, the latter of which is higher in the waste hierarchy. In addition, this definition is already part of a working regime - Wales is on track to meet its first statutory recovery target.

However, introducing the definition in the Northern Ireland context means that changes may be required to the collection and recycling infrastructure, data collection and recording system and, the monitoring and enforcement system already in place in Northern Ireland. Stakeholders would have to develop an understanding of this definition and the differences between, and the implications of, its interface with the existing definition of recycling in the 2003 Waste Management Licensing Regulations as amended.

Question 30: Do you consider this definition as it stands as suitable for the regime surrounding the 60% statutory target in Northern Ireland?

As proposed in section 12, the Department proposes that the draft Bill will contain a broad enabling power to allow the Department to define ‘recycling’ by regulations. The regulations will be the subject of a further consultation.

13.3. How the definition of ‘recycling’ is applied in practice

In considering what can be counted as being recycled for the purposes of the 60% target, the report produced by the Waste Strategy Task Group drew the Department’s attention to the European Commission’s Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste (the Waste Framework Directive) published in June 2012. It also drew the Department’s attention to the Welsh Assembly Government’s consultation on guidance supporting the definitions contained in its legislation for the statutory recovery targets. The report suggests that consideration needs to be given to allowing outputs from a range of Energy from Waste plants to contribute to the 60% target.

The Task Group report suggested that the Department should consider the inclusion of home composting, and the recycling of abandoned vehicles and tyres as counting towards being recycled for the purposes of the statutory target, even though these are not proposed to be counted towards the Welsh statutory recovery target. The report noted that consideration is required of instances of poorly sorted material delivered from Material Recovery Facilities

and the subsequent removal of contamination by reprocessors, but notes that this is the subject of a forthcoming consultation by the Department.

The Department considers that the evidence resulting from the data analysis exercises proposed in section 11 is fundamental to it taking decisions on how the definition of 'recycling' is applied in practice and proposes to defer taking a decision on this issue until the outcome of this exercise is known. However, given that the Waste Strategy Task Group report has asked the Department to consider three specific wastes, views are sought on these below.

Question 31: Do you think that home composting should be counted as being recycled for the purposes of the 60% target?

Question 32: What is the rationale for your opinion and how could this information be captured/estimated?

Question 33: Do you think that the recycling of abandoned vehicles should be counted as being recycled for the purposes of the 60% target?

Question 34: What is the rationale for your opinion?

Question 35: Do you think that the recycling of tyres should be counted as being recycled for the purposes of the 60% target?

Question 36: What is your rationale for your opinion?

13.4. Monitoring and enforcement regime

The aim of the monitoring and enforcement regime is to ensure compliance with the legislation for the 60% target. Until decisions are taken on the other key policy issues it is impossible to be definitive about the shape of the monitoring and enforcement regime. However, it would seem likely that councils' existing reporting mechanism on LACMW – WasteDataFlow – could form part of the monitoring regime.

Again, depending on the decisions taken on the other key policy issues the enforcement regime could be made up of criminal and civil sanctions and include measures such as enforcement notices, fines and fixed penalty notices.

As proposed in section 12, the Department proposes that the draft Bill will contain a broad enabling power to allow the Department to specify a monitoring and enforcement regime by regulations. The regulations will be the subject of a further consultation.

The report produced by the Waste Strategy Task Group contained a section on incentives and penalties. It noted that the Task Group had considered incentivisation versus penalty schemes and concluded that it would prefer the emphasis be placed on incentive rather than penalty schemes. It recommended that the Department should consider extraordinary mechanisms which would contribute to an improvement of waste management performance, such as restrictions of waste collection frequency or volume. As stated in the summary of options and issues for consideration (incentives and sanctions) in section 9, the Task Group indicated that the Department should properly consider matters of fairness and equality, the need of robust data, and associated costs when bringing forward the legislation to introduce the 60% target. The Task Group report also stated a preference for the regime to be designed to allow for flexibility of penalties so that mitigating circumstances can be taken into account.

The Department intends to explore these options and issues in the course of the consultations on and development of the legislation for the 60% statutory recycling target.

14.ADDITIONAL ISSUES TO BE INCLUDED IN THE DRAFT BILL

14.1. Council charges for household waste deposited at civic amenity sites by commercial operators

In 2010 the NI Ombudsman received a complaint from a landscape gardener against a local council. The gardener had been charged for depositing garden waste - generated at a friend's property on one occasion, and at his own

property on another occasion - at the Council's recycling centre. Upon complaining to the Council, it refunded the charges. However, the gardener remained unhappy with how the complaint had been handled and contacted the Ombudsman.

In the course of investigating this case, the Ombudsman concluded that under the existing legislative framework, this waste was effectively household waste. He further concluded that the Council has no legislative authority to charge for the deposit of household waste, irrespective of who delivers the waste to the Recycling Centre. The Ombudsman recommended that the Council should advise the public that no charge would be levied by the Council for the disposal of household waste, and that refunds should be offered to those who had been incorrectly charge. The council accepted these recommendations¹⁶.

More generally, the Ombudsman noted the possibility that other Councils have been charging inappropriately for this service. He recommended that all councils should review their policies to ensure that they have legal cover for any charges which they make for services in this area.

14.2. Department's position

During the course of its investigations, the Ombudsman sought the Department's views on elements of this case. Prior to the resolution of this Ombudsman case, many councils in NI did charge commercial operators for the deposit of any waste materials deposited at household recycling centres, including household waste.

The Department in turn sought the views of Counsel. Counsel advised that the clear statutory purpose of the existing legislative provision – specifically Article 25(1)(b) and Article 25(5)(b) of the Waste and Contaminated Land

¹⁶ <http://www.ni-ombudsman.org.uk/niombudsmanSite/files/15/15b6fb56-6f41-4405-8788-a30c2a3e471e.pdf>

(Northern Ireland) Order 1997¹⁷ - is to allow for household waste, however it is delivered, to be disposed of free of charge at recycling centres¹⁸.

From a policy perspective, the Department believes that, charging for household waste can be justified in certain circumstances - for example where household waste resulting from commercial activities is deposited by commercial operators at a household recycling centre. However the Department also accepts that an amendment to the 1997 Waste and Contaminated Land Order is required to close the gap in the legislation which currently prevents such charging.

In considering how best to draft the required legislative provision, the Department would welcome responses to the following questions:

Question 37: In what circumstances should councils charge for the deposit of household waste at household recycling centres?

Question 38: In what circumstances should councils NOT charge for such deposits?

¹⁷ SI 1997/2778 (NI 19)

¹⁸ In this instance 'recycling centre' or 'household recycling centre' means a facility provided by councils under Article 25(1)(b)

ANNEX A: Consultation response form

The questions on which the Government is seeking views are set out below in the same order as they are listed in the Policy options for a Recycling Bill consultation document.

Information about you

Please state whether you are responding as an individual or representing the views of an organisation. If you are representing an organisation please state which organisation you represent, and, where applicable, how the views were assembled.

Name:
Name of organisation:
Contact details:
How your views were assembled:

Consultation questions

Question 1: Have you any comments on the Department's preliminary conclusions in relation to equality screening, human rights or rural proofing?

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Question 2: What modifications would be required to this approach to deliver a workable regime in Northern Ireland for a statutory 60% recycling target for LACMW to be achieved by 2020?

Question 3: Are the definitions contained in the Welsh Order suitable for the proposed regime to introduce a statutory 60% recycling target for LACMW (to be achieved by 2020) in Northern Ireland?

Question 4: Given that a monitoring regime will be necessary to ensure that the 60% statutory recycling target is achieved in Northern Ireland, is it sensible to follow the approach taken in Wales and utilise the existing WasteDataFlow system as the reporting mechanism for the monitoring system in NI?

Question 5: The proposed regime to introduce a statutory 60% recycling target for LACMW in Northern Ireland will require both incentives and penalties. Thinking about penalties, do you think that the amounts of

financial penalties in the Welsh legislation, applied in the new NI regime, would act as sufficient incentive to encourage compliance with the NI legislation for the 60% statutory target?

Question 6: The above analysis indicates an overall benefit to society through the introduction of the Welsh regime to introduce statutory recovery targets. Do you think that the introduction of the 60% statutory target in Northern Ireland is likely to have a similar outcome?

Question 7: What Northern Ireland data is required prior to the introduction of the 60% statutory target in Northern Ireland to demonstrate what the overall benefit to society in Northern Ireland is?

Question 8: Do you or your organisation wish to be involved in, as appropriate, the data gathering exercise that will underpin this work?

Question 9: What are the main factors that need to be considered in taking this work forward?

Question 10: Are there existing sources of evidence that would be useful for this work?

Question 11: Do you agree with this approach to the development of the Northern Ireland framework?

Question 12: Do you think that adopting a non-statutory stepped approach for the 60% target is useful?

Question 13: Do you agree with this approach?

Question 14: What are the advantages and disadvantages of the disaggregated and aggregated approach?

Question 15: What is your preferred approach?

Question 16: Do you agree with the advantages and disadvantages listed for this scenario?

Question 17: What further advantages and disadvantages are there?

Question 18: Do you agree with the advantages and disadvantages listed for this scenario?

Question 19: What further advantages and disadvantages are there?

Question 20: Do you agree with the advantages and disadvantages listed for this scenario?

Question 21: What further advantages and disadvantages are there?

Question 22: Looking at all of the scenarios above, do you consider that the ideal scenario is to have two or more parties responsible for achieving the 60% target?

Question23: How would this work in practice?

Question 24: Do you agree with the advantages and disadvantages listed for this scenario?

Question25: What further advantages and disadvantages are there?

Question26: Looking at all of the scenarios above, which of these, or any alternative, would be your preferred option?

Question 27: How would the preferred option that you have identified work in practice?

Question 28: Do you consider this definition as it stands as suitable for the regime surrounding the 60% statutory target?

Question 29: Do you think this definition should be modified to include preparation for re-use?

Question 30: Do you consider this definition as it stands as suitable for the regime surrounding the 60% statutory target in Northern Ireland?

Question 31: Do you think that home composting should be counted as being recycled for the purposes of the 60% target?

Question 32: What is the rationale for your opinion and how could this information be captured/estimated?

Question 33: Do you think that the recycling of abandoned vehicles should be counted as being recycled for the purposes of the 60% target?

Question 34: What is the rationale for your opinion?

Question 35: Do you think that the recycling of tyres should be counted as being recycled for the purposes of the 60% target?

Question 36: What is your rationale for your opinion?

Question 37: In what circumstances should councils charge for the deposit of household waste at household recycling centres?

Question 38: In what circumstances should councils NOT charge for such deposits?

Thank you for completing the response form. Responses can be sent:

By email to: Janice.harvey@doeni.gov.uk

By post to: Janice Harvey
Department of the Environment
Environmental Policy Division
6th Floor
Goodwood House
44-58 May Street
Belfast BT1 4NN

By fax to: 028 9025 4732

The consultation closes on Monday 2 September 2013.