

CLIMATE CHANGE (SCOTLAND) BILL: WASTE PROVISIONS

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The Climate Change (Scotland) Bill was introduced in the Parliament on 4 December 2008. The Bill contains provisions that aim to improve waste management and recycling in order to help move Scotland towards a zero waste society. Reducing the amount of waste we produce and reusing or recycling that which we do produce will contribute to lowering Scotland's greenhouse gas emissions and thus contribute to mitigating climate change. This briefing considers the waste proposals in the Bill. SPICe briefing [09/03 Climate Change \(Scotland\) Bill](#) considers all other provisions in the the Bill. A separate SPICe Briefing will consider the forestry provisions in detail.

An [audio summary](#) of this briefing is also available.



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KEY POINTS

- This briefing considers the waste provisions in the Climate Change (Scotland) Bill (“the Bill”) and sets them in the context of the Government’s zero waste policy. The main purpose of the Bill is to set a target for the reduction of greenhouse gases by 80 per cent by the year 2050 and the waste provisions are one element of the means to achieve that target.
- The Government announced its zero waste policy in January 2008 and issued a consultation on the waste provisions to be included in the Bill as one of the means to implement its policy in July 2008.
- The measures that the Government consulted on, and which now form the provisions in the Bill, are:
 - the introduction of waste prevention and management plans for businesses and public bodies
 - the provision of information to SEPA on waste produced
 - the provision of facilities to deposit waste for recycling away from domestic premises
 - the procurement of recycle by businesses and public bodies
 - targets for reductions in packaging
 - a statutory deposit and return scheme
 - charges for the supply of carrier bags.
- The main issues that arose from the consultation were:
 - that business associations, individual businesses and retail sector representatives strongly preferred voluntary agreements to the imposition of legislative measures
 - the desire for a threshold approach so that smaller businesses were exempt from any legislative measures
 - the potential negative impacts on existing structures, for example, the impact on recycling collection schemes provided by local authorities if there is a shift in the way in which people recycle products (i.e. away from domestic premises)
 - potential financial costs to businesses and local authorities, for example staff, infrastructure and transportation costs
 - the potential burden of enforcement, particularly for local authorities and SEPA.
- The Bill is an enabling framework with each of the provisions on waste requiring regulations under secondary legislation to implement them. Each Regulation will be subject to the affirmative resolution procedure thus ensuring that there will be parliamentary scrutiny before they come into force.
- The earliest that the Government intends to implement any of the waste provisions in the Bill is one year from the date of the Bill receiving Royal Assent; in some cases the Government anticipates that additional consultation will be required and that therefore implementation will not be for approximately five years.
- All of the provisions are subject to a form of voluntary agreement and action is, therefore, already being taken on the measures. The Bill will provide a statutory underpinning to these voluntary agreements if satisfactory progress is not forthcoming.
- The cost of the waste provisions cannot be fully anticipated because it is not yet known whether the voluntary agreements will be sufficient thus rendering implementation of the provisions unnecessary. For the same reason, the Scottish Government has not estimated enforcement costs. However, should enforcement be necessary, the Government anticipates that enforcement will be carried out by existing public bodies.

INTRODUCTION

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead) [announced](#) (2008a) a review of the National Waste Plan and a move to a zero waste society on 24 January 2008. His statement highlighted the direct relationship between how waste is managed and the Government's commitment to reducing greenhouse gas emissions.

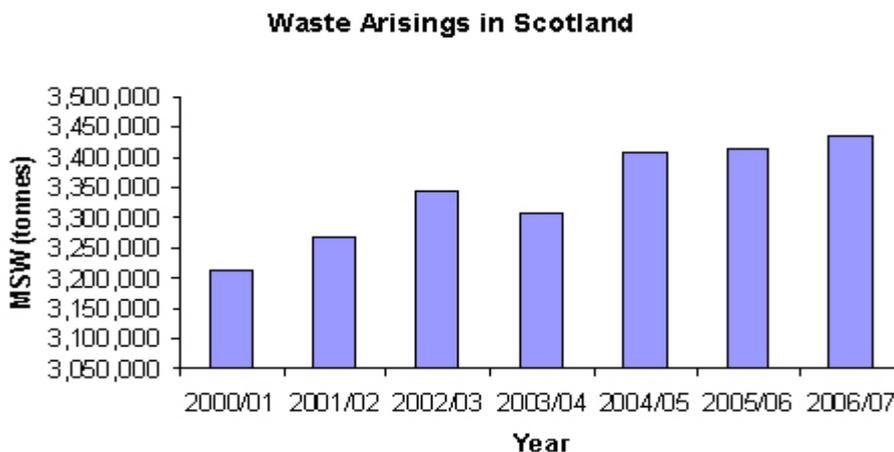
At present waste management contributes 2.5 per cent of Scottish greenhouse gas emissions. However, this percentage does not include the emissions produced as a result of the way in which we use resources. Thus reducing our use of raw materials, using recycle and obtaining value from the waste that we do produce will all contribute to tackling climate change and reducing greenhouse gas emissions.

The proposed legislative measures on waste contained in the Scottish Government's Climate Change (Scotland) Bill address resource use as a means of mitigating climate change.

WASTE MINIMISATION, MANAGEMENT AND DISPOSAL IN SCOTLAND

SOME KEY WASTE STATISTICS

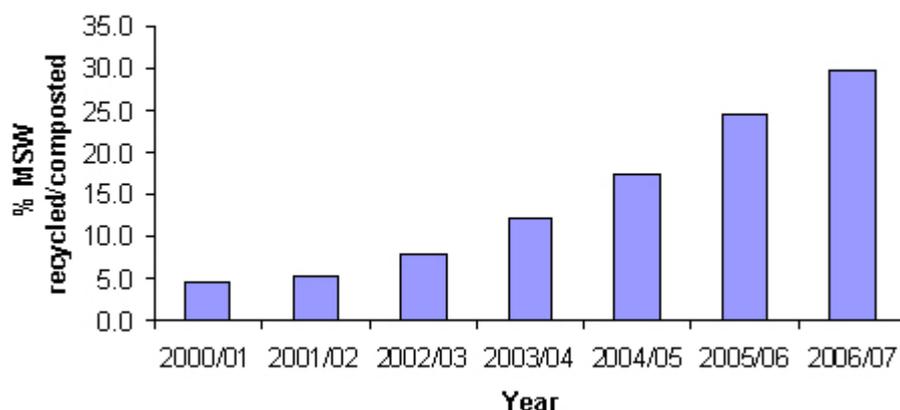
Waste Aware Scotland states that municipal solid waste (MSW) in Scotland is rising by around 1% per year. The undernoted graph shows the amount of waste produced in Scotland each year since 2000 (Source: [Waste Aware Scotland](#)):



SEPA (2009) states that "a growth rate of 1.6% means that the total amount of waste we generate will double by 2040."

The amount of municipal solid waste recycled and composted in Scotland has risen from 4.5% in 2000/01 to 29.8% in 2006/07. The graph below shows the percentage of waste recycled and composted in Scotland each year since 2000 (Source: [Waste Aware Scotland](#)):

Recycling in Scotland



Data on non-municipal waste ([commercial and industrial waste](#)) was collected by SEPA in surveys in the years 2004 and 2006. Commercial and industrial waste (but not construction waste) shows a decrease of 15% over the years 2004 to 2006. However, construction waste and demolition waste increased by 61% to 11.8 million tonnes over that period. The overall amount of waste from agriculture, fishing and forestry sectors declined by 3% over the same period. These figures and other data on waste is contained in SEPA's latest [key facts and trends booklet on waste data](#) published in 2008. It gives figures on all waste arisings for the year 2006. Data for the reporting years 2007 and 2007/08 are due to be published in Spring this year.

Waste prevention sits at the top of the waste hierarchy (prevention, reusing, recycling, recovery, disposal) because, of course, waste that is not produced does not need to be managed: as Friends of the Earth Scotland (2008a) state: "preventing or reducing waste generation is the most energy- and cost-efficient way to deal with our waste". SEPA (2009) echoes this message:

"At the heart of SEPA's work on waste prevention is the recognition that many different players have a role to play in preventing waste – right from the product designer to the retailer, the consumer and the local authority as collector of the waste. Government also has a role to play in setting the right policy context to make waste prevention easier."

Waste management is part of a wider cycle of production and consumption and, therefore, policies to moderate our consumption of resources and production of goods form the basis of the Government's zero waste policy. These principles also inform EU waste legislation from which waste management policy is largely derived.¹ There are two EU Directives that are most relevant to the waste provisions in the Bill.² These are:

- the Revised Waste Framework Directive – (approved on 20 October 2008). The Directive reiterates the waste hierarchy: (a) prevention; (b) preparing for re-use; (c) recycling; (d) other recovery e.g. energy recovery; and (e) disposal³

¹ This issue is discussed in [Waste Management in Scotland. Toward Zero Waste?](#) (Reid 2007) (see sources section below).

² Other EU Directives that are relevant include the Waste Incineration Directive, the Packaging and Packaging Waste Directive, the Waste Electrical and Electronic Equipment Directive, the End of Life Vehicles Directive and the forthcoming Directive on Batteries and Accumulators.

³ The revised directive must be transposed into domestic legislation by 12 December 2010. The Bill does not transpose the Directive but there are compatibilities between them which are discussed in this briefing.

- the Landfill Directive - which introduces targets for reducing the quantity of biodegradable municipal waste (BMW) sent to landfill. The target to reduce BMW by 50 per cent of that sent to landfill in 1995 by 2013 is a major driver towards reusing and recycling waste. Thus, the way in which local authorities dealt with residual waste was one of the topics covered by a report from by Audit Scotland on sustainable waste management (discussed later in this briefing)

ZERO WASTE POLICY

In the [Policy Memorandum](#) that accompanies the Bill, the Government defines “zero waste” as:

“reducing the unnecessary use of raw materials, sustainable design of products, preventing waste, and recovering value from products and materials when they reach the end of their lives through recycling, composting or energy recovery.”

An earlier SPICe briefing (Reid 2007), gives an introduction to waste management in Europe and Scotland and discusses the background to implementing a zero waste policy.

The Government’s zero waste policy moves away from large energy-from-waste plants,⁴ a key feature of the previous administration’s National Waste Plan, and shifts the emphasis to an expansion of recycling and composting (although high efficiency energy-from-waste plants remain part of the new policy). The Government’s policy aims to comply with various domestic and European legislative requirements. Both the Scottish Government’s [The National Waste Management Plan for Scotland Regulations 2007](#) and the EU [Revised Waste Framework Directive](#) require a national waste management plan that, amongst other things:

- must not harm human health or the environment
- encourages waste reduction, prevention and recycling
- encourages the use of waste as a source of energy.

The Government has yet to put in place its planned review of the National Waste Plan.⁵ Therefore waste policy is currently encapsulated in announcements made by the Cabinet Secretary and in the legislative measures included in the Bill.

In his announcement in January 2008 (Scottish Government 2008a), the Cabinet Secretary set municipal waste targets up to 2025, made a number of policy statements, and announced his intention to consult on various waste policy issues. The [Consultation Paper on Potential Legislative Measures to Implement Zero Waste](#)⁶ (2008b) was subsequently published on 28 July 2008.

The targets set by the Cabinet Secretary in his announcement were:

- to stop growth in municipal waste by 2010 and to reduce the amount of municipal waste that is landfilled to a maximum of five per cent by 2025
- to set a range of recycling and composting targets for municipal waste up to 2025:
 - a minimum of 50 per cent by 2013
 - a minimum of 60 per cent recycling by 2020
 - and a further aspirational target of a minimum of 70 per cent by 2025

⁴ Energy from waste is obtained from heat released from combustion which is recovered and then used to generate electricity, heat, steam or hot water.

⁵ On the 21 January 2009, the Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead) stated that a consultation on the National Waste Plan will take place in the Spring and early Summer.

⁶ Hereinafter referred to as the Zero Waste Consultation.

- that no more than 25 per cent of municipal waste should be treated by energy-from-waste by 2025 (this cap to include anaerobic digestion if it is used to treat mixed waste).

In addition, the Cabinet Secretary stated that 40 per cent recycling/composting was needed by 2010 to meet the first Landfill Directive target.

The policy statements that the Cabinet Secretary made to support the targets in his announcement were:

- support for community recycling focused on waste prevention and innovation and support for social entrepreneurs (in addition to continuing financial support for the Community Recycling Network for Scotland)
- that “further action” would be taken if significant progress was not made through the voluntary agreement on reducing the environmental impact of plastic bags
- the encouragement of the approach to treat recycling as a business
- help to develop markets for recycled materials, for example, focussing on markets for mixed plastics and to engage further with retailers on the types of materials that they use for their products and packaging to ensure that more can be recycled
- to support technologies such as anaerobic digestion, that can be used to treat food waste and produce biogas.

A Zero Waste Fund of £154 million over three years was set up of which over £100 million would be allocated to:

- support recycling and composting infrastructure including anaerobic digestion plants treating source-segregated organic waste
- high efficiency energy-from-waste plants and other facilities which divert waste from landfill and have high environmental performance
- support work on markets for recycled products, waste education and awareness, community recycling, waste prevention and commercial and industrial waste.

These policies and associated funding stream suggest that the Government is seeking to encourage greater rates of recycling through community action, business development and voluntary agreements rather than by relying solely on legislative measures. Friends of the Earth Scotland (2008a) state that strategic waste targets, which permit some use of landfill and incineration, are not the same as ‘zero waste’, which should be based on waste prevention and the design of products to enable maximum recovery and reuse of materials.

The zero waste policy has been incorporated into the Government’s overall programme through the national performance framework which drives local government expenditure plans through the [Concordat between the Scottish Government and Local Government](#) (Scottish Government 2008c). The national performance framework and the landfill target are discussed later in this briefing.

SUSTAINABLE WASTE MANAGEMENT – REPORT BY AUDIT SCOTLAND

Audit Scotland (2007) published a report, [Sustainable Waste Management](#), reviewing the work of local authorities, SEPA and the then Scottish Executive in reducing the amount of waste being sent to landfill. The report covered the period from the obligations imposed by the EU Landfill Directive in 1999 until 2007. It sets out a number of recommendations “to improve the economy, efficiency and effectiveness of waste management”. The report was published in September 2007.

The report is partly critical of the delivery of the 2003 National Waste Plan and states that, despite high rates of recycling, Scotland is unlikely to meet its obligations under the Landfill

Directive, particularly the 2013 target. Any failure to meet EU obligations will incur substantial fines.⁷ The report identified “slow progress” in developing facilities to deal with waste that is not recycled as the main issue behind the “significant risk” of failing to meet Landfill Directive targets. These facilities included the design and build of energy-from-waste plants which divert waste from landfill and incinerate it (the resultant ash is recycled for use in, for example, road building and construction). Other key messages in the report were:

- that significant progress has been made in meeting interim recycling targets
- increases in the amount of recycling has led to increased costs
- that there was an urgent need to build organisational capacity within councils and in the Scottish Government in order to make rapid progress in waste minimisation.

In the Government’s [response](#) to the Scottish Parliament Audit Committee (2008) on Audit Scotland’s report, the Director General Environment (Richard Wakeford) stated that the new policy direction provided a framework for the achievement of the Landfill Directive targets and that the targets:

“are capable of being met with the active support and full co-operation of local authorities in Scotland (as part of the overall Concordat between the Scottish Government and local authorities) and through other delivery bodies as appropriate such as the community sector, the Waste and Resources Action Programme (WRAP), the Scottish Waste Action Programme (SWAG) and Remade (Scotland)”.

THE CLIMATE CHANGE (SCOTLAND) BILL

On 4 December 2008, the [Climate Change \(Scotland\) Bill](#) (“the Bill”) was introduced into the Parliament. Part 5, Chapter 4 of the Bill sets out measures aimed at improving waste and recycling as part of the action needed to fulfil the target of reducing greenhouse gas emissions by 80 per cent by 2050 as set out in Section 1 of the Bill. The [Policy Memorandum](#) states that the waste measures will “help Scotland move to a ‘zero waste’ society”. The measures reflect the Government’s commitment to encouraging reuse and recycling and they also conform to the waste hierarchy. The Bill enables Ministers to create regulations that:

- require businesses and public bodies to:
 - prepare waste prevention and management plans
 - provide information to SEPA about the waste that they produce
 - specify that the goods they procure must contain a minimum percentage of recycle
- require Scottish Ministers to:
 - set targets for reductions in packaging
 - require provisions to be made for the establishment of a statutory deposit and return scheme
- require certain persons to provide facilities for people to deposit recycling away from the home including at temporary events
- require persons supplying carrier bags to charge for those bags and that the net proceeds be applied to environmental good causes.

This Briefing considers the waste provisions only. A further SPICe briefing will consider all other provisions of the Bill and a separate SPICe briefing will consider the forestry provisions in detail.

⁷ A detailed explanation of the stages of any infraction process are set out in the Director General Environment’s letter to the Scottish Parliament’s Audit Committee (see sources section below).

THE AIM AND PURPOSE OF THE BILL

The [Explanatory Notes](#) state that the aim of the Bill “is to establish a framework to drive greater efforts at reducing Kyoto Protocol greenhouse gas emissions in Scotland”. Sections 1, 2 and 3 of the Bill set targets for the reduction of greenhouse gases to the year 2050 and establish reporting mechanisms. The Bill provides for clear annual targets to be set for reducing greenhouse gas emissions from 2010. A definite annual percentage target is set for the year 2020 when the Bill requires that emissions must be reduced by at least 3 per cent per year until 2050.

The annual reduction in greenhouse gases sets the context within which the mitigation and adaptation policies contained within the Bill sit and amongst these policies are the waste provisions. The rationale behind the waste provisions is, therefore, to improve resource efficiency in order to contribute to reducing greenhouse gas emissions on a year-on-year basis to 2050.

THE WASTE PROVISIONS

There are eight provisions setting out measures aimed at improving waste and recycling. There are three main issues which relate to the provisions as a whole and these are discussed below.

The Bill as an enabling framework

Each of the waste provisions enables the Scottish Ministers to make regulations to implement the proposals; enactment of the Bill, therefore, will not place any additional legislative duty on any public or private body to minimise waste. The Government states that all of the waste measures will be the subject of detailed consultation with stakeholders before any regulations are made. In addition, each Regulation will be subject to the affirmative resolution procedure ensuring parliamentary scrutiny of the measures before they are enacted.⁸

In its Zero Waste Consultation (Scottish Government 2008b), the Government states that “the earliest any of the regulations could in force would be one year after the Climate Change Bill receives Royal Assent.” In addition, the consultation states that some provisions, such as section 58 on deposit and return schemes, could take up to five years to be in force because of the need for a full implementation group to consider the matter in detail. Thus the earliest that all of the waste provisions set out in the Bill could be in force by is 2015. The Cabinet Secretary states that this is the right approach because:

“our aim is to develop a framework of relevant powers that can be used if and when they are needed on the journey towards a zero waste society”. (Scottish Government 2008b)

While secondary legislation to enact the provisions is being considered, consulted on and drafted, the Government expects that the amount of waste sent to landfill will reduce as a result of the policy levers currently in place. These levers are various voluntary agreements, for example, on reductions in packaging and in the use of plastic carrier bags, and fiscal measures such as the Landfill Tax accelerator. However, the Government anticipates that should any of the measures in the Bill be implemented then the rate of reduction will be faster.

Some respondents to the Zero Waste Consultation commented that the time lag for enacting the measures through secondary legislation would be too long:

⁸ Details on this procedure can be found in the Delegated Powers Memorandum a link for which is in the sources section below.

“the process of enacting and then implementing primary legislation would be likely to take several years. Given the industry initiatives around zero waste that are already in place and beginning to deliver, this would seem an unnecessary distraction from delivering progress.” (Scottish Food and Drink Federation 2008)

The [Consultation on Potential Legislative Measures to Implement Zero Waste: Analysis of Responses](#) (Scottish Government 2008d)⁹ states that:

“the belief that there would be a lengthy time lag in the implementation of legislation (...) and that, by comparison, voluntary measures would deliver results faster, was (...) repeatedly emphasised”.

Voluntary agreements and the risk factor

The Zero Waste Consultation Analysis states that:

“(i)n general, Business Associations, individual businesses and representatives of the Retail Sector exhibited a strong preference for voluntary measures stating that existing voluntary protocols (...) were successful”.

The Government has not indicated in the documents accompanying the Bill whether it intends to implement any or all of the provisions; no draft Orders, for example, have been published giving suggested detail for any of the provisions. However, as set out in the Zero Waste Consultation (Scottish Government 2008b) the waste provisions are already the subject of voluntary actions and agreements such as:

- providing advice to businesses and householders on the unnecessary use of raw materials and on waste prevention
- voluntary work on packaging (including the [Courtauld Commitment](#) between WRAP and major retailers to halt the growth in packaging provided to customers and then to reduce the overall amount of such packaging)
- reducing the environmental impact of carrier bags by 25 per cent (the agreement has recently been reached to increase this figure to 50 per cent by Spring 2009 (Waste Aware Scotland 2009b))
- work by local authorities to improve and enhance recycling facilities

In addition, [Scottish Planning Policy 10: Planning for Waste Management](#) (Scottish Government 2008e) encourages the construction industry to produce site waste management plans.

For each waste provision in the Bill, the Partial Regulatory Impact Assessment (RIA) (Scottish Government 2008b) sets out the risks associated with relying on voluntary agreements and how the Government envisages that risk being mitigated. These mitigating factors are:

Bill Provision	Mitigating Factor
Preparation of waste prevention and management plans	Provision of more advice
Procurement of recycle	
Providing information on waste to SEPA	Obtaining the information from other sources (i.e. other regulatory returns and surveys commissioned by bodies other than SEPA)
Depositing recyclable waste away from the home	Encouragement from Government, the public and staff to provide appropriate recycling

⁹ Hereinafter referred to as “the Zero Waste Consultation Analysis”.

	facilities
Reducing packaging	Ensuring that non-statutory commitments have challenging targets on packaging reduction
Deposit and return schemes	Targeted information campaigns at householders and businesses
Charges for the supply of carrier bags	Ongoing discussions with retailers through the already established working group with retailers

These mitigating factors are either already underway or could be developed relatively quickly. So, although the timescale for preparing and introducing secondary legislation is estimated to take between one and five years, this does not imply that no action will be taken on waste reduction and recycling over that period.

One consequence of relying on voluntary agreements is that the Government does not increase the overall amount of regulation to which businesses (and public sector bodies) are required to comply. This accords with the Government's [better regulation](#) (2008f) commitment: "to ensuring that regulations, where necessary, are proportionate and take into account the interests of business, charities and the voluntary sector". An overarching theme from the Zero Waste Consultation relating to almost all of the proposed legislative provisions was that there should be a threshold below which the provisions should not apply so that smaller businesses, for example, would not be overburdened with regulation.

However, some respondents to the Zero Waste Consultation took a different view on some of the proposals. For example, in regard to the duties for public bodies and businesses to provide recycling facilities, the Environmental Association for Universities and Colleges (2008) states that:

"A uniform approach to public bodies and businesses should be favoured as this has the advantage that the public would be exposed to the same standard whether in their role as an employee or as a customer and this should aid compliance."

The nature of voluntary agreements, of course, is that they are voluntary and not underpinned by statute. They are not, therefore, subject to statutory penalties for non-compliance.

Penalties and enforcement

For each waste provision, the Explanatory Notes state that "it is very likely that a system of enforcement, including offences and penalties, would be required" should the section be implemented. The penalties that would apply are set out in Section 61 of the Bill. Maximum penalties would be:

- on summary conviction, a fine not exceeding the statutory minimum (£10,000 at time of writing)
- on conviction on indictment, a fine which would be subject to the courts discretion and is unlimited.

Where a provision requires an enforcement authority, Section 60 states that the enforcement bodies would be SEPA, local authorities or such other person or body as the Scottish Ministers consider appropriate (the RIA cites Audit Scotland as a possible enforcement agency for the bodies that it monitors). It is understood that it is not the Government's intention to create a new body to enforce the waste provisions. The RIA also states that, where appropriate, advice would be provided by the WRAP.

So, by implementing the provisions the Government ensures that there will be a financial penalty for non-compliance. The inclusion of enabling provisions on waste disposal and recycling on the face of the Bill emphasises to businesses and public bodies the importance of reducing the amount of waste produced to mitigating climate change. The provisions are, therefore, the penalty for not complying with the voluntary agreements.

The exact cost of any enforcement provisions has not been estimated in the Financial Memorandum that accompanies the Bill because: “the costs and efficiencies arising as a result of the proposals will vary widely according to how and when they are implemented”. However, the Memorandum does provide some indicative costs for each provision and these are discussed below.

CALL FOR EVIDENCE RESPONSES TO THE ZERO WASTE CONSULTATION

The paragraphs below provide a brief explanation of each provision, summarise the indicative costs and give an indication of some of the issues raised in the consultation. This section does not attempt to cover all these issues. Further information is available in the Policy Memorandum and the Explanatory Notes which accompany the Bill and the Zero Waste Consultation Analysis. A [summary](#) (2008g) of the issues raised in the consultation has been produced by the Caledonian Environment Centre.

Section 52 – Waste prevention and management plans

Section 52 enables the Scottish Ministers to make provisions requiring certain persons to prepare plans for the prevention, reduction, management, recycling, use and disposal of waste produced by or otherwise associated with their activities. The Policy Memorandum cites the construction industry and general office-type businesses as being likely to be affected by this section. Cost estimates in the Financial Memorandum are based on the cost of site waste management plans which are compulsory in England and Wales. The costs are estimated as being in the range of £350 for a project worth £70,000 and £1,600 for a project worth £1,600,000. Cost efficiencies may generate offsetting savings up to approximately £4,800 for projects worth £1,600,000. These costs are applicable equally to government, local authorities and to other bodies, individuals and businesses. There may be staff costs for local authorities and SEPA which may be offset by charges.

A majority of respondents to the Zero Waste Consultation were in favour of legislating in this area because, amongst other reasons, the provision would support waste prevention and “ensure compliance and provide a level playing field for waste producers”.

“[waste prevention and management plans] would help reinforce the polluter pays principle and help move companies away from the ‘end-of-pipe’ approach to waste management still employed by many in Scotland.” (AEA Technology (Scottish Government 2008h))

Those not in favour of legislating in this area believed that, amongst other reasons, the provision was bureaucratic and that voluntary action was preferred which should be accompanied by a Code of Practice, guidance and clear advice:

“information and advice is more likely to result in businesses making the necessary changes as waste reduction increasingly makes economic sense”. (Scottish Enterprise (Scottish Government i))

Should legislation be required, some respondents to the Zero Waste Consultation suggested that mandatory Site Waste Management Plans based on project size would be a preferred option.

Section 53 – Information on waste

Section 53 enables Scottish Ministers to make regulations to require businesses and public bodies to provide information to SEPA about the waste that they produce. The cost to government and local authorities of providing this information is considered to be marginal. However, there may be additional costs for SEPA should enforcement be required and costs to other bodies, individuals and businesses will depend on the detail of the regulations. The Policy Memorandum states that “it will be difficult to move to a zero waste society without much better information”. In addition, the Government and SEPA “currently lack reliable data” to assess compliance with elements of Article 11 of the Revised Waste Framework Directive. The Policy Memorandum is clear that “to ensure [that] a full range of statistics is available for all wastes, new primary legislation is necessary”.

The majority of respondents to the Zero Waste Consultation were in favour of legislating in this area and a large number felt that current voluntary measures were not working effectively. In its response, SEPA states that:

“whilst it would be unfair to place too much of a burden on business it does not appear unreasonable to require businesses, particularly large ones, to have a knowledge of their waste and to report this to SEPA”. (SEPA (Scottish Government 2008j)).

Amongst the main reservations to this provision were: that data may be already available; that the requirement may prove burdensome; and that voluntary measures were preferred. Glasgow City Council expressed the view that the additional burden to provide this information would be passed to local authorities:

“businesses would simply request that their waste collector provide the required information and paperwork. This would merely add to that which local authorities already complete in relation to statutory annual waste transfer returns.” (Glasgow City Council (Scottish Government 2008k))

Sections 54 and 55 – Recyclable waste: facilities for deposit, including at events

The Policy Memorandum states that the intention behind these provisions is “to encourage recycling by providing people with opportunities to deposit waste for recycling when they are not home”. The Explanatory Notes state that section 54 could be used to require offices to have facilities to collect paper etc. Section 55 empowers local authorities to issue notices requiring organisers of temporary public events to provide recycling facilities. Both sections require the waste collected to be, as far as practicable, recycled. There will be costs involved for providing the receptacles and for ensuring that the waste is collected and recycled. However, the Financial Memorandum states that costs will “benefit society through the more efficient use of resources and a reduction in waste disposed of by landfill”. Again, should legislation be required there will be enforcement costs for SEPA.

Opinion on the need for legislating in this area amongst respondents to the Zero Waste Consultation varied with some feeling that it was vital as current voluntary measures are insufficient and produce inconsistent results:

“we do not believe that a voluntary approach will deliver the scale of change required to maximise recycling and make good progress towards a zero waste Scotland”. (Friends of the Earth Scotland 2008b)

Others felt that current voluntary measures were sufficient with legislation only being required should these measures fail. Other concerns raised related to costs and impact on current recycling facilities:

“in principal this is a good idea but in practice great care would be required to ensure that it was deliverable within rural Scotland and that it could be integrated into local collection schemes and services. It is possible that such facilities would damage existing, successful initiatives, given that the number of recycle streams that can viably be collected is limited.” (Comhairle nan Eilean Siar (Scottish Government 2008l))

Section 56 – Procurement of recycle

This section gives Scottish Ministers the power to set binding requirements on businesses and public bodies so that specified items procured or constructed by them must include or contain a certain amount or proportion of recycle. The Financial Memorandum states that this provision is unlikely to add additional costs to government, public bodies or businesses because the type of materials likely to be specified are traded widely, likely to be priced competitively and that the replacement of virgin materials with recycled ones is unlikely to increase costs. However, local authorities and SEPA may incur costs if they are appointed as enforcement bodies. The Financial Memorandum raises the issue of perception which it states is a barrier to the use of products derived from waste.

There was no clear pattern in the views of respondents to the Zero Waste Consultation on this issue. Some respondents suggested that legislating in this area would stimulate markets and that the voluntary approach was inadequate. The Scottish Environmental Services Association, for example, in its consultation response stated:

“recent figures suggest that public expenditure accounts for 51% of Scottish GDP and there is a huge potential to use this route to stimulate demand for recycled materials”. (Scottish Environmental Services Association (Scottish Government 2008m)).

Those not in favour of legislating in this area preferred to rely on market conditions and consumer demand:

“reinforcement of a voluntary approach to procurement to improve such purchasing plus global economic and environmental drivers should all play a part in improving recycling content in new products without legislation.” (Argyll and Bute Council (Scottish Government 2008n))

Both sides of the argument raised concerns about technical feasibility, recycle availability, stifling of innovation and product performance.

Section 57 – Targets for reduction of packaging

This section gives the Scottish Ministers powers to set binding targets for overall reductions in packaging. The Policy Memorandum states that the duty is likely to fall primarily on retailers but may also fall on those who supply packaged goods to retailers. There are a number of different ways of achieving a reduction in packaging and the Policy Memorandum suggests, amongst others:

- light weighting (for example using less glass in the production of bottles and thus reducing their weight)
- alternative forms of packaging
- buying in bulk
- encouraging refills
- supplying concentrated products.

Costs will depend on the form of regulation introduced but are likely to fall on either local authorities or SEPA as possible enforcement bodies and are estimated to be about £250,000 per annum in staff costs which may be offset by a reduction in the amount of waste sent to

landfill. The Financial Memorandum also states that other costs could be offset by efficiencies elsewhere, such as transportation costs etc. These offsetting costs are not fully quantified by the Government.

The Zero Waste Consultation Analysis states that there was no overall consensus on legislating in this area. Many of those who responded believed that current measures and their enforcement were ineffective whilst others believed that voluntary measures are effective and that legislation may prove inflexible. The Analysis states that “local authorities were more likely to be in favour of legislation whilst retail and business sectors preferred the voluntary approach”:

“the Council would support in principle any measures which would encourage those who create packaging to accept responsibility for its environmental impact overall, mitigation of this impact, and for its disposal.” (The City of Edinburgh Council (Scottish Government 2008o))

“we believe that existing legislation, voluntary agreements such as the widened Courtauld Commitment and continuing consumer and media pressure will together lead to **optimum** reductions in packaging used. The application of legislation to enforce packaging reduction will inevitably lead to increased product wastage, greater environmental damage, increased costs to the consumer and, ultimately, consumer dissatisfaction.” (The Packaging Federation 2008)

Section 58 – Deposit and return schemes

This provision gives Scottish Ministers powers to set up a statutory deposit and return scheme. The Policy Memorandum and the Financial Memorandum cite examples of such schemes set up in Denmark, Sweden and Germany as well as the scheme operated by A. G. Barr plc. Costs will be dependent on the type of scheme. For government, this may involve set up costs estimated at £200,000. The Financial Memorandum cites the experience in Denmark and Norway as an indicator of costs to bodies (other than for local authorities and government), individuals and businesses and estimates the costs at between £15 and £20 million per annum. The Financial Memorandum states that costs would have to be recovered, for example, via deposit fees and the sale of recyclate. In addition, the Policy Memorandum states that any scheme may have financial benefits by reducing the amount of waste that local authorities are required to handle.

There was a considerable amount of comment on legislating in this area from respondents to the Zero Waste Consultation. There was, however, no clear majority view either in favour or not in favour of the provision. Those in favour felt that deposit and return schemes would:

- promote sustainable waste management
- encourage reuse and recycling
- reduce litter.

“The deposit and return scheme would place the burden of responsibility where it belongs - on the producers, and will further extend producer responsibility requirements into supermarkets, shops and fast food outlets.” (Perth and Kinross Council (Scottish Government 2008p))

Those against felt that such schemes would:

- undermine current collection schemes
- would be ineffective because of issues surrounding:
 - convenience
 - cost
 - accessibility
 - coverage

- o environmental benefit.

“Deposits improve the recycling rate for beverage containers, but the added cost and complication of operating two parallel systems means that overall recycling rates are lower.” (Industry Council for Packaging and the Environment (INCPEN) (Scottish Government 2008q))

The Zero Waste Consultation Analysis also states that “amongst all responses there were those that raised concerns that the schemes may not be legal due to Competition Law”. This issue is discussed in a briefing for the Public Petitions Committee ([Reid 2008](#)). In Germany a law making cans and bottles the subject of a refundable levy came into effect on 1 January 2003. The law required customers to pay an extra €0.25 on most canned and bottled drinks (beer, mineral water and soft drinks) and to return empties to the same shop where they were purchased. The European Commission subsequently ruled that the system was illegal on the basis that it imposed disproportionate trade restrictions on other EU producers. The Commission argued:

“... that there was no functioning nation-wide take-back system at the time of the introduction of the deposit obligation. Retailers were only required to accept the return of packaging of the exact type, shape and size they had in their own stock. This cumbersome legislation made it difficult to import beverages into Germany and constituted a barrier to trade in the internal market”.

Infringement procedures were subsequently closed when Germany reworked the deposit system and simplified the rules on the recovery of the deposit for consumers. One-way bottles can now be returned, in principle, at every shop selling beverages in packaging of the same material type.

Section 59 – Charges for supply of carrier bags

The purpose of section 59 is to reduce the number of carrier bags in circulation by making regulations about charging by sellers of goods for the supply of carrier bags and for requiring that the net proceeds of such charges be applied to environmental good causes. This issue was explored in the Member’s Bill introduced by Mike Pringle, MSP in Session 2 and in 2005 [Lamb](#) outlined the issues involved in a SPICe briefing. The Parliament’s Environment and Rural Development Committee, whilst supporting the stated objectives of the Bill, agreed not to recommend the general principles of the Bill to the Parliament and the Bill was subsequently withdrawn by Mike Pringle, MSP.¹⁰

The Financial Memorandum to the Climate Change (Scotland) Bill sets out various estimated costs based on the experience in Ireland where a charge is made for carrier bags and the Regulatory Impact Assessment carried out for Mike Pringle’s Member’s Bill. The cost of enforcement is estimated at £3.5 million per annum. Depending on the nature of the regulations, income (if paper bags are included) is estimated at £8.14 million per annum; costs to the Government centre on publicity campaigns and are estimated at £750,000.

There was considerable comment on this issue among the respondents to the Zero Waste Consultation. The majority did not favour legislating in relation to single use carrier bags. This view was expressed by all of the retail and waste management respondents, most of the local authority respondents and over half of the Business Association respondents. The most common reason for not legislating was that voluntary measures appear to be working:

¹⁰ The Session 2 Environment and Rural Development Committee’s report on the Bill is available on the Scottish Parliament’s website see sources section below.

“many major retailers are already implementing voluntary carrier bag reduction initiatives which are a significant move in the right direction”. (Valpack (Scottish Government 2008r))

There were various areas of discussion around the nature of the provision:

- whether the legislation should cover all single use carrier bags or only plastic bags
- whether the provisions should ban carrier bags completely
- whether a charge, tax or levy would be more effective than a complete ban.

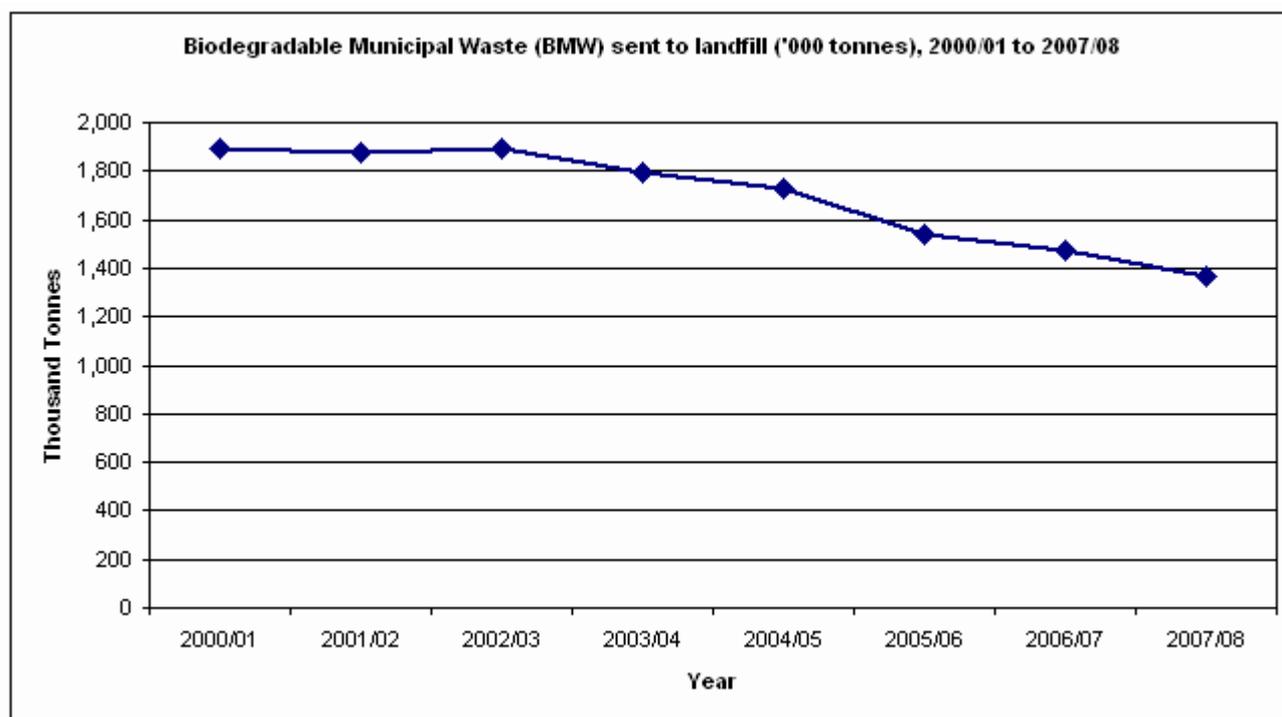
HOW THE GOVERNMENT PLANS TO MEASURE THE SUCCESS OF ITS ZERO WASTE POLICY

THE NATIONAL PERFORMANCE FRAMEWORK

The Government has put in place 15 national outcomes and 45 national indicators that enable it to track progress towards these national outcomes. These outcomes and indicators form the major part of the national performance framework which is available on the Government’s website: [Scotland Performs](#) (2008s).

Reducing the amount of waste sent to landfill to 1.32 million tonnes by 2010 is a national indicator under national outcome 14, which states: “(w)e reduce the local and global [environmental impact](#) of our consumption and production”. At the time of writing, the Government states that this national indicator is on track and performance is improving.

Figures on the Government’s website state that there has been an overall reduction in the volume of biodegradable municipal waste sent to landfill. The latest figure of 1,370 kt during 2007/08 is a reduction of 101 kt compared with 1,471 kt in 2006/07.



(Source: Scottish Government 2008s. Available at: <http://www.scotland.gov.uk/About/scotPerforms/indicators/reduceLandfill> Crown Copyright)

LOCAL AUTHORITY RESPONSIBILITY TO REDUCE THE AMOUNT OF WASTE SENT TO LANDFILL

National outcomes are used by local authorities to allocate the funding they receive from the Government. Through the Concordat local authorities are committed to supporting progress at national level through improvement in outcomes at local level. Each local authority jointly agrees a [Single Outcome Agreement](#) (SOA) with the Scottish Government. SOAs set out the outcomes which each local authority seeks to achieve through the services that each local authority delivers. In addition the SOA also seeks to demonstrate how each local authority will contribute to the 15 national outcomes as local authorities consider appropriate. The current SOAs were agreed in June 2008. The second round of SOAs are currently being drafted with draft SOAs expected to be submitted to the Scottish Government in February with an anticipated sign off date of June 2009. The key difference from the previous round of SOAs is that the Community Planning Partners will be expected to sign up to SOAs in the next round. In the first round of SOAs only local authorities were required to sign up to the SOA although in practice 15 local authorities involved community planning partners in developing and agreeing SOAs in 2008-09.

Local authorities allocate the resources provided by the Government to the services within their remit (in this case waste disposal) and this is informed by the translation of the Government's national outcomes and their related national indicators into a local context. The Concordat also provided for a substantial reduction by the Scottish Government in the level of local government ring-fenced funding; the Strategic Waste Fund, for example, has been rolled up into the local authority settlement. Rather, each local authority has the freedom to determine its priorities to suit local circumstances but this determination must be within the parameters of the Concordat between central and local government. This Concordat requires that local government set out the progress and achievements made by local authorities, through SOAs, towards the national outcomes.

So, for example, in its SOA, Comhairle nan Eilean Siar, has considered national outcome 14 and concluded that:

“The Outer Hebrides is a remote rural area with a relatively small, low density, population engaged in predominantly non-industrial activities. In absolute terms, the region's contribution to the processes driving climate change is small, compared to urban and industrial regions, and yet the local impact of climate change (e.g. sealevel rise, increased storm intensity) will be disproportional. The contribution per head is likely to be relatively large, in common with other rural areas, the opportunity to make a meaningful impact is limited.”

The Council has interpreted this national outcome and translated it into local indicators and targets amongst which is:

“Maintain within prescribed upper limits of BMW sent to landfill (where the base line is 11,799 tonnes in 2006/07):

- 2008/09 11,236 tonnes
- 2009/10 10,677 tonnes
- 2010/11 10,125 tonnes”.

These annual reducing targets mirror the annual reductions in emissions required by the Bill from 2010.

Dundee City Council has an energy-from-waste plant in its area and states in its SOA that it has “a relatively low tonnage of domestic waste going to landfill compared with other authorities”. The Council has, therefore, set itself a target of reducing the amount of municipal waste to landfill to 23,685 tonnes by 2010 (where the base line is 26,265 tonnes in 2006/07).

The Concordat and the associated SOAs represents a step change in the way the relationship between central and local government operates. Central government relies considerably less on ring-fencing funding to ensure that its policy initiatives are implemented; local government takes decisions on how to prioritise its block allocation to reflect its targets in its SOA.

Thus the implementation of the zero waste policy will be delivered through the various national outcomes and national indicators which will be interpreted by local authorities on a local-priority basis.

ALTERNATIVE TO LANDFILL - ENERGY FROM WASTE

In terms of the waste hierarchy, incineration to produce energy is considered to score above landfilling but below reducing, reusing or recycling waste (Reid 2007). At a waste summit hosted by the Scottish Government in 2007, 80 per cent of the attendees (who were mainly local authority councillors and officials) supported the use of incineration. However, environmental organisations, for example WWF, argued against the use of incineration to create energy on the grounds that incineration undermines recycling effort because it depends on a ready supply of highly calorific fuel like card and plastics which could be recycled.

The Government's new zero waste policy does not rule out incinerating waste. However, the main policy shift from the previous administration's National Waste Plan is a move away from large energy-from-waste plants and an expansion of recycling and composting. The Cabinet Secretary stated that large energy-from-waste plants "that have low efficiency levels (...) could prove a disincentive to recycling and require major public funding over a very long period." (Scottish Government 2008a) The waste provisions in the Bill appear to reflect this change in emphasis with six of the eight provisions aimed directly at encouraging reuse and recycling.

The Director General Environment (Richard Wakeford) in his letter to the Parliament's Audit Committee (2008) explains:

"the new Government [has] concluded that the large scale residual waste facilities (primarily energy from waste plants) envisaged by the previous Administration would not be procured, built and commissioned in time to meet the 2013 target, (...). Instead, the government and local authorities will need to place much greater reliance on the further expansion of recycling and composting (...). The Government believes that this approach is much more likely to command public support and acceptance and, therefore, avoid the delays that have been experienced with major waste infrastructure projects elsewhere ...".

The Director General suggests that smaller scale infrastructure which may assist with the Government's change in policy direction would be anaerobic digesters, in-vessel composters for treating biowaste and waste fuelled combined heat and power or district heating schemes.

However, energy-from-waste plants are argued as necessary in order to meet the requirement to divert waste from landfill (reducing landfill to five per cent and increasing recycling and composting to 70 per cent leaves 25 per cent of residual waste to be diverted somewhere).

Audit Scotland identified energy-from-waste plants as one of the major ways of diverting waste from landfill. In its report it highlighted the National Audit Office's finding that one of the common features of those countries that had made greater progress in reducing dependence on landfill, was an acceptance of generating energy-from-waste as an alternative method of waste disposal. Audit Scotland (2007) recommends that:

“to facilitate the progress of residual waste treatment facilities councils and the Scottish Government should make clear to the public the long-term benefits of technologies for the treatment of residual waste, including energy from waste”.

Some local authorities (Shetland, Orkney, Dundee and Angus) already have access to energy-from-waste plants, but there is some public opposition to them in other areas. Audit Scotland cites the proposals for an energy-from-waste facility in Aberdeen as meeting with widespread opposition. However, Aberdeen City Council (2008) is currently [consulting](#) on its waste strategy and it specifically mentions the benefits of energy-from-waste plants. The Council offers a warning to local residents that continuing to send waste to landfill will “leave an unpleasant and expensive environmental legacy for future generations”.

Some Members raised concerns during the [question and answer session](#) in the Chamber (Scottish Parliament 2008) following the Cabinet Secretary’s statement in January about the energy-from-waste target. In particular, Members asked whether the regional cap on incinerating waste would result in some local authorities importing waste from other regions and whether compensation would be made available to those local authorities who had already committed funds for the incineration of waste in energy-from-waste plants. The Cabinet Secretary stated that the regional cap on incineration was designed to ensure that no council was diverted from increasing recycling to incinerating waste.

OTHER RELEVANT WASTE LEGISLATION

The waste provisions in the Bill are part of an overall framework of waste legislation that applies to the UK as a whole. In particular the EU Revised Waste Framework Directive and the waste provisions in the UK Climate Change Act 2008.

EU REVISED WASTE FRAMEWORK DIRECTIVE

The Scottish Government took the requirements of the EU [Revised Waste Framework Directive](#) (“the Directive”) into account when considering the waste provisions in the Bill. The Bill does not transpose the Directive (which must be transposed into domestic legislation by 12 December 2010). EU countries will have to adopt waste prevention programmes 5 years after the Directive comes into force, with the Commission subsequently releasing regular reports on progress made. It introduces EU-wide recycling targets: by 2020, all EU countries must recycle 50 per cent of their household waste and 70 per cent of construction and demolition waste.

There are areas of compatibility between the Bill and the Directive:

Article 11

Paragraph 121 of the Policy Memorandum states that the provisions in section 52 of the Bill on waste prevention and management plans will help meet the requirement in Article 11(2)(b) of the Directive on the targets for recycling 50 per cent of household waste and 70 per cent of construction and demolition waste. As noted elsewhere in this briefing, the Scottish Government and SEPA “currently lack reliable data” with which to assess compliance with this requirement and it is anticipated that this will be addressed by the provisions in section 53 of the Bill on the provision of waste data to SEPA.

Paragraph 134 of the Policy Memorandum states that the provisions in sections 54 and 55 of the Bill on the deposit of recyclable waste whilst not intended to implement any specific European obligations will help to meet the requirement in Article 11(1) of the Directive for measures:

“to promote high quality recycling and to this end [Member States] shall set up separate collection of waste where technically, environmentally and economically practicable and appropriate to meet the necessary quality standards for the relevant recycling sectors”.

Article 28

Article 28 of the Directive requires Member States to ensure that competent authorities establish one or more waste management plans. Section 52 of the Bill contains provisions on the preparation of waste management and prevention plans.

Article 29

Article 29 requires Member States to establish waste prevention programmes no later than 12 December 2013. Annex IV sets out examples of waste prevention measures referred to in that Article. These include:

- The use of voluntary agreements, consumer/producer panels or sectoral negotiations in order that the relevant businesses or industrial sectors set their own waste prevention plans or objectives or correct wasteful products or packaging. (Measure 9)

The Policy Memorandum that accompanies the Bill indicates that all the provisions are the subject of a form of voluntary agreement.

- Economic instruments such as incentives for clean purchases or the institution of an obligatory payment by consumers for a given article or element of packaging that would otherwise be provided free of charge. (Measure 11)

Section 59 on charges for supply of carrier bags has relevance here.

- In the context of public and corporate procurement, the integration of environmental and waste prevention criteria into calls for tenders and contracts, in line with the Handbook on environmental public procurement published by the Commission on 29 October 2004”. (Measure 15).

Section 56 on the procurement of recyclate has relevance here.

Other relevant Articles in the Revised Directive are: Article 6 on end-of-waste status, Article 8 on extended producer responsibility and Article 9 on prevention of waste.

THE UK CLIMATE CHANGE BILL

The preamble of the UK Climate Change Act 2008 (c. 27) states that, amongst other things, the Act will:

“confer powers to make schemes for providing financial incentives to produce less domestic waste and to recycle more of what is produced; to make provision about the collection of household waste; to confer powers to make provision about charging for single use carrier bags”.

The specific waste provisions are set out in Part 5 of the Act, clauses 71-77, and schedules 5 and 6 and apply to England and Wales.

In brief, clauses 71 to 77 introduce schedule 5 which amends the Environmental Protection Act 1990 (c. 43) and sets out the provisions for making waste reduction schemes. The clauses

provide for the piloting of waste reduction schemes; for the pilot schemes to be reviewed and reported on; and for the roll-out or repeal of waste reduction plans following the pilot studies.

The purpose of a waste reduction scheme is to provide a financial incentive (a) to produce less domestic waste, and (b) to recycle more of what is produced with the aim of reducing the amount of residual domestic waste. A waste reduction scheme applies to domestic premises within the particular waste collection area to which the scheme applies. The scheme must have a financial incentive either as a rebate from council tax or in the form of charges (or a combination of both).

The emphasis in the UK Act is on domestic premises rather than on businesses and public bodies as is the case in the Scottish Bill. However, the regulations in the UK Act are not prescriptive and it will be the responsibility of the waste authority to decide on the nature of the waste reduction plan. DEFRA has launched its [Zero Waste Places](#) scheme which has identified 6 pilot areas in England which will aim to reduce the environmental impact of the waste whether the waste is produced in domestic premises, in the workplace or in the community.

Clause 76 provides for receptacles for household waste collection by the waste authority. Clause 77 introduces Schedule 6 which sets out the provisions to enable the relevant national authorities (excluding Scotland) to make provision by regulations about charging by sellers of goods for the supply of single use carrier bags. It differs from section 59 in the Scottish Bill as a requirement for the net proceeds to be used for environmental purposes is not on the face of the Act.

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