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The Waste (Scotland) Regulations 2012

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This briefing provides details of the Scottish Government's proposed Waste (Scotland) Regulations 2012 which were laid before the Scottish Parliament on 15 March 2012. The paper provides a summary of the proposals in the Scottish Government's original policy statement (published in October 2011) and summarises consultation responses received by the Scottish Parliament's Rural Affairs, Climate Change and Environment Committee as part of their consideration of the Regulations.



The Scottish Parliament
Pàrlamaid na h-Alba

CONTENTS

EXECUTIVE SUMMARY	3
SCOTLAND'S ZERO WASTE PLAN	5
THE WASTE HIERARCHY	6
SCOTTISH GOVERNMENT CONSULTATION ON THE PROPOSED ZERO WASTE (SCOTLAND) REGULATIONS.....	7
THE WASTE (SCOTLAND) REGULATIONS	9
CONSULTATION RESPONSES.....	16
KEY ISSUES	16
ANNEXE A – SCOTTISH GOVERNMENT'S ZERO WASTE PLAN ACTIONS	21
SOURCES	24

EXECUTIVE SUMMARY

The Scottish Government's Zero Waste Plan (published in June 2010) sets out the strategic direction for waste policy in Scotland over the next decade. The Government's vision for achieving a zero waste society is "where waste is seen as a valuable resource, valuable materials are not disposed of in landfills, and most waste is sorted for recycling, leaving only limited amounts to be treated"

The waste hierarchy, as set out in the European Waste Framework Directive is a key cornerstone of the Scottish Government's Zero Waste Plan and the Waste (Scotland) Regulations. Article 4 of the Directive sets out the hierarchy for dealing with waste:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery, e.g. energy recovery; and
- (e) disposal

The aim of the Waste (Scotland) Regulations is to deliver three key action points in the Zero Waste Plan.

- The Scottish Government will introduce progressive bans on the types of materials that may be disposed of in landfill, and associated support measures, to ensure that no resources with a value for reuse or recycling are sent to landfill by 2020. (Action 4)
- To support the introduction of landfill bans, the Scottish Government will introduce regulations to drive separate collection and treatment of a range of resources in order to maximise their reuse and recycling value, and generate market supply. The initial focus will be on separate collection of food waste, in order to recover its material and energy value and avoid contamination of other waste materials. (Action 8)
- The Scottish Government will introduce regulatory measures to support the delivery of landfill bans, by ensuring energy from waste treatment is only used to recover value from resources that cannot offer greater environmental and economic benefits through reuse or recycling. These measures will supersede the current 25% cap which currently applies only to municipal waste, and are likely to result in similar amounts of resources being available for energy from waste treatment. (Action 14)

The Regulations are also designed to assist with progress in achieving the aims of the waste hierarchy.

The key proposals in the Regulations are:

- a requirement to remove key recyclables (plastics and metals) from mixed waste prior to incineration (from 1 July 2012);
- a requirement for businesses to present dry recyclables (metals, plastics, paper, card and glass) and food waste of more than 50 kg/week for collection from the end of 2013, with those producing less than 50kg/week exempt until the end of 2015;
- a requirement on local authorities to provide householders with a collection service for dry recyclables (end of 2013) and food waste (end of 2015);
- a ban on materials collected separately for recycling going to landfill or incineration (end of 2013); and
- a ban on biodegradable municipal waste going to landfill, thus helping to substantially reduce harmful emissions of methane (end of 2020).

In addition, the Regulations propose a ban on the non-domestic use of food waste disposal units (macerators).

The Rural Affairs, Climate Change and Environment Committee invited consultation responses on the Scottish Government's Policy Statement for the Zero Waste Regulations. This was conducted before the Government laid the Regulations before Parliament (15 March 2012).

The key issues raised by respondents were;

- the costs to business and local authorities that will be involved in observing the Regulations;
- that rural local authorities will face specific practical and financial problems in observing the Regulations;
- that more clarity was required about the circumstances in which co-mingled collections would be permitted;
- that in some cases, due to co-mingling, quality waste may end up being incinerated;
- support for the ban on food waste disposal units (macerators) from some consultees, and in contrast disagreement with the Government's evidence base for the ban on macerators and objections to the ban from others;
- a belief from some local authorities that enforcement powers were required to ensure the Regulations could be successfully implemented, and;
- a call for a more detailed Business Regulatory Impact Assessment which better addresses the cost of the Regulations on business and in particular the potential cost of the ban on macerators.

The Regulations were laid in the Scottish Parliament on 15 March 2012 and will now be subject to scrutiny by the Rural Affairs, Climate Change and Environment Committee.

SCOTLAND'S ZERO WASTE PLAN

The Scottish Government published its Zero Waste Plan (the plan) in June 2010. The Plan sets out the strategic direction for waste policy in Scotland over the next decade and is intended to be an economic strategy and a resource strategy – not simply a waste strategy. It sets out the Scottish Government's vision for achieving a zero waste society, “where waste is seen as a valuable resource, valuable materials are not disposed of in landfills, and most waste is sorted for recycling, leaving only limited amounts to be treated” (Scottish Government 2010). The plan sets out 22 key actions to deliver the zero waste agenda (including the introduction of the new legislative measures being considered here) and these are set out at Annexe A.

The Zero Waste vision for Scotland is:

- “where everyone – individuals, the public and business sectors - appreciates the environmental, social and economic value of resources, and how they can play their part in using resources efficiently;
- reducing Scotland’s impact on the environment, both locally and globally, by minimising the unnecessary use of primary materials, reusing resources where possible, and recycling and recovering value from materials when they reach the end of their life;
- about helping to achieve the targets set in the Climate Change (Scotland) Act 2009 of reducing Scotland’s greenhouse gas emissions by 42% by 2020 and 80% by 2050;
- to contribute to sustainable economic growth by seizing the economic and environmental business and job opportunities of a zero waste approach.” (Scottish Government 2010)

The Zero Waste Plan seeks to address all of Scotland’s waste. This is a departure from previous strategies that focused, in the main, on waste under the control of local authorities which accounts for about 17% of the overall total.

THE WASTE HIERARCHY

The European Waste Framework Directive ([2008/98/EC](#)) sets out a waste hierarchy for the management of waste. This hierarchy is a cornerstone of Scottish Government's new Waste Regulations and indeed its wider zero waste agenda.

Article 4 of the Directive sets out a hierarchy which, if implemented, should drive waste prevention and reuse, significantly increase recycling rates and reduce the amount of waste being sent to landfill. It states:

"The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery, e.g. energy recovery; and
- (e) disposal."



Scottish Government 2012

The European Commission is preparing a set of Guidelines aiming to help develop National Waste Prevention Programmes. According to the Commission the Guidelines are being finalised and will be available on the website in the first quarter of 2012 (European Commission 2012).

In addition, specific guidelines have been prepared to address food waste. "[Guidelines on the preparation of food waste prevention programmes](#)" are aimed primarily at national policymakers developing National Waste Prevention Programmes as required by the 2008 Waste Framework Directive. The guidelines can also support policymakers in developing national strategies for biodegradable municipal waste required under the Landfill Directive, and can be a useful tool for waste management organisations, businesses, institutions, local authorities and environmental protection agencies and other actors dealing with food waste.

SCOTTISH GOVERNMENT CONSULTATION ON THE PROPOSED ZERO WASTE (SCOTLAND) REGULATIONS

To assist in achieving the aims of the Zero Waste Plan, in January 2011, the Scottish Government consulted on its proposed regulations. The consultation outlined the development of two statutory instruments. The first, the Waste (Scotland) Regulations 2012 will amend the Environment Protection Act 1990; the Waste Management Licensing Regulations 2011; the Pollution Prevention and Control (Scotland) Regulations 2000 and the Landfill (Scotland) Regulations 2003. The second statutory instrument will see the Environmental Protection (Duty of Care) Regulations 1991 replaced by the Environmental Protection (Duty of Care) (Scotland) Regulations 2012. The Waste (Scotland) Regulations 2012 were laid before Scottish Parliament on 15 March 2012 whilst The Duty of Care Regulations are to be laid before the Scottish Parliament later in the Spring.

The measures proposed in both sets of regulations essentially address two waste categories; sorted materials for recycling and unsorted waste requiring further treatment, recovery and disposal. The proposed regulations adopted a dual approach to maximise recycling and to maximise resource recovery and protect the environment through treatment of unsorted waste. (Scottish Government 2011)

The consultation proposed five key measures;

- Source segregation and separate collection of key recyclable materials
- A ban on mixing separately collected recyclable materials
- A ban on landfilling the key recyclable materials
- A restriction on the inputs to energy from waste (EfW) facilities
- A property based ban on waste disposed to landfill based on organic content

According to the Government's consultation; "Under these proposals, much less waste will be transported directly from the producer to incineration or landfill. Source segregation will drive greater volumes of recyclable materials to appropriate treatment for recycling. Unsorted wastes will be pre-treated to extract any remaining recyclable materials, produce Refuse Derived Fuel and reduce the biodegradability of the landfilled fraction thereby reducing its potential to generate the potent greenhouse gas methane." (Scottish Government 2011).

The Government consultation set out a timetable for the phased introduction of the new regulatory measures. It was proposed that the requirement to present dry recyclables and food waste separately for collection was to be introduced by end of 2013, whilst dry recyclate was to be banned from landfill and incineration from the end of 2015. Finally, by 2017, it was proposed to ban biodegradable municipal waste from landfill.

The Policy Statement on the Zero Waste Regulations published in October 2011 was the Scottish Government's formal response to the consultation and it set out some proposed changes brought about as a result of the consultation. The Policy Statement said:

"Our consultation exercise showed strong support for the principles underpinning our draft regulations, however a number of technical and practical issues were raised, for instance:

- cost to local authorities of putting in place appropriate collection and management infrastructure to collect recyclable materials, including food waste from households;

- cost to local authorities to procure appropriate residual waste management infrastructure contracts, i.e. time needed to manage transition from current practice and contracts to services which deliver zero waste objectives;
- time for the waste management industry to develop suitable collection services for their customers and invest in appropriate management infrastructure;
- the extent of pre-treatment required before residual waste can be incinerated;
- the potential for the ban on biodegradable waste to landfill to result in 'orphan' waste streams with no alternative management or disposal outlet;
- the need for a longer lead in time to put in place appropriate residual waste infrastructure prior to the commencement of the ban on landfilling biodegradable waste." (Scottish Government 2011)

THE WASTE (SCOTLAND) REGULATIONS

On 15 March 2012, the Scottish Government laid The Waste (Scotland) Regulations 2012 before the Scottish Parliament. The final Regulation was not available when preparing this briefing so the Scottish Government's Policy Statement (published in October 2011) has been used to summarise the main legislative proposals in the Regulations. The Scottish Government has confirmed that the proposals in the final Regulations are broadly similar to the proposals presented in the Policy Statement.

The aim of the regulations

The aim of the Regulations is to deliver three key actions outlined in the zero waste plan:

- “The Scottish Government will introduce progressive bans on the types of materials that may be disposed of in landfill, and associated support measures, to ensure that no resources with a value for reuse or recycling are sent to landfill by 2020.” (Action 4)
- “To support the introduction of landfill bans, the Scottish Government will introduce regulations to drive separate collection and treatment of a range of resources in order to maximise their reuse and recycling value, and generate market supply. The initial focus will be on separate collection of food waste, in order to recover its material and energy value and avoid contamination of other waste materials.” (Action 8)
- “The Scottish Government will introduce regulatory measures to support the delivery of landfill bans, by ensuring energy from waste treatment is only used to recover value from resources that cannot offer greater environmental and economic benefits through reuse or recycling. These measures will supersede the current 25% cap which currently applies only to municipal waste, and are likely to result in similar amounts of resources being available for energy from waste treatment.” (Action 14)

The Regulations aim to achieve the following:

- “Maximise the quantity and improve the quality of materials available for recycling
- Make sure that materials which could have been recycled are not wasted
- Protect the environment by ensuring that only suitable waste streams are finally disposed of in landfill
- Provide greater certainty for investment in infrastructure
- Manage waste according to its resource value and not according to where it came from.”

The revised timetable

Following the consultation exercise, the Scottish Government has proposed changes to the timetable for introducing certain measures under the Waste Regulations. The key changes proposed are:

- Businesses producing small amounts of food waste will not be required to present food waste separately for collection until the end of 2015 (was 2013).

- Local authorities have an additional two years in which to roll out food waste collections to households – they will now be required to begin the roll out in 2013 and complete it by the end of 2015.
- The Scottish Government will be establishing a rurality based criteria for determining where food waste collections have to be delivered. According to the Scottish Government, this recognises the economic and environmental challenges of rolling out such a service in these areas.
- Moving the date for introducing a ban on sending biodegradable waste to landfill back to the end of 2020 (it was 2017) and restricting the ban to municipal biodegradable waste, thereby allowing some industrial biodegradable wastes to go to landfill when no other viable alternative exists.

Under the Government’s new proposals the timetable for introduction is as follows:

	End of 2013	End of 2015	End of 2020
Source segregation	<p>Businesses- present dry recyclables (all businesses) and food waste (businesses producing over 50kg/week) for collection*</p> <p>Local authorities- offer dry recyclables collection service and begin roll out of food waste collections.</p>	<p>Businesses- present food waste for collection*</p> <p>Local authorities- complete roll out of food waste collection</p>	
Bans	<p>Ban on mixing source segregated materials</p> <p>Ban on landfilling and incinerating source segregated materials</p>	<p>Requirement to remove dense plastics and metals from residual waste prior to incineration (existing facilities)**</p>	<p>Ban on biodegradable municipal waste to landfill</p>

* Applies to businesses involved in food production, food retail or food preparation

** For new facilities, this requirement will come into effect on commencement of the regulations

Co-mingling

Co-mingled waste is the collection of a number of recyclable materials in the same box or bin, for example paper, glass and plastics

According to the Scottish Government, the European Commission have made clear that under the Waste Framework Directive (2008/98/EC), co-mingling of recyclable materials is considered to be a form of derogation from separate collection and will only be permitted where a co-mingled system can deliver the necessary quality standards for the relevant recycling sector and promote high quality recycling (Scottish Government 2011a).

“co-mingled collection of single waste streams may be accepted as a derogation from the requirement for separate collection, but the benchmark of “high quality recycling” of

separately collected single waste streams has to be regarded; only if subsequent separation can achieve high quality recycling similar to that achieved with separate collection, co-mingling is acceptable against Article 11 of the Waste Framework Directive and the principles of the waste hierarchy”.

As a result the Government’s proposed regulations only permit the adoption of co-mingled systems for dry recyclables where the waste hierarchy is not undermined and material quality remains as would be if items were collected separately by individual waste type. The aim of this approach is to deliver high quality recycling thereby ensuring that more material is recycled and its market value maximised.

Source Segregation and Separate Collection

A key factor in determining the resource value of recycled materials is how the waste is treated at the outset. For waste to retain a high resource value it is important that materials are separated from other wastes at source thereby maintaining quality.

The Scottish Government’s policy statement outlines that for the waste management sector, new practices which preserve the quality of resources present a real financial opportunity “as the sale of recyclate to the reprocessing market makes up an increasing proportion of revenue”. (Scottish Government 2011a)

As part of the new Regulations, the Scottish Government will introduce a statutory requirement for all waste producers (with the exception of householders) to separate the key dry recyclables (glass, metal, plastic, paper and card) and food at source. This duty will apply to all waste producers including, for example, shops, offices, factories, restaurants, schools and hospitals, whether public or private.

The source segregation and separate collection of dry materials will be introduced by the end of 2013. The Government has also indicated it will ban the mixing of separately collected wastes with other waste where such mixing would hinder future recycling.

The requirement to present food waste separately will be phased in to allow a longer lead in time for those businesses that produce small amounts of food waste. In effect this means that any food business producing less than 50kg per week will not have to present that waste separately for collection until the end of 2015. Businesses producing over 50kg per week need to present food waste from end of 2013. Food waste collections from commercial shows, exhibitions, concerts and sporting events etc will now be captured by way of conditions to be attached to public entertainment licences. This will allow local authorities flexibility to apply discretion as to which events need to present food waste.

The Scottish Government has stated that Zero Waste Scotland, is developing a package of support measures for businesses in order to assist them in meeting the requirements of the Waste Regulations.

Use of Food Waste Disposal Units

To supplement the requirement for source segregation and separate collection of food waste, and to ensure that it is managed in line with the waste hierarchy, the Waste Regulations also propose a ban on the non-domestic use of food waste disposal units (macerators) and food waste digesters which involve ‘treated food’ being discharged into the public sewer network.

According to the Scottish Government:

“The key drivers for this ban are to ensure that the resource value of food waste can be realised and that we manage food waste in compliance with Article 4 of the revised Waste

Framework Directive which requires Member States to apply the hierarchy as a priority order in waste prevention and management legislation and policy. The ban will deliver this by maximising the availability of material for collection and treatment in anaerobic digestion facilities that are able to meet the industry standard that enables the digestate to be used by farmers under conditions set by Quality Meat Scotland. This ban will come into effect from the end of 2015.” (Scottish Government 2011a)

According to Scottish Water the disposal of food waste into the sewer network increases the “risk of blockages, sewer flooding, environmental pollution, odours and rodent infestations”. In addition, both Water UK and Scottish Water have advised that the loss of flow capacity and associated risk of flooding caused by the build-up of fat, oil, grease and other debris is already a major concern and something that the sewer network was never designed to deal with. (Scottish Government 2011a)

Local Authority Recycling Services

Under the new Regulations, Local Authorities will have a duty from the end of 2013 to provide receptacles to householders to enable them to recycle dry recyclables such as glass, metals, plastics, paper and card. In a change from the original consultation proposals, the new Regulations will now not require Local Authorities to make provision for the collection of textiles; it will be at the discretion of each Local Authority to decide whether it wishes to collect textiles.

The new Regulations will also require Local Authorities to initiate the roll-out of a household food waste collection programme by the end of 2013, and to have completed the roll-out by end of 2015.

In the Government’s consultation exercise, Local Authorities raised concerns about whether it would be economically and environmentally practicable to roll out food waste collections in rural areas. As a result, according to the Scottish Government’s Policy Statement:

“The Regulations will therefore identify areas of the country based on population density and travel distance between towns where local authorities will be required to offer separate collection of food waste from households” (Scottish Government 2011a)

Another issue raised by Local Authorities surrounded how to collect food waste from high density housing, such as high rises greater than 4 floors. The Scottish Government’s Policy Statement indicated that the statutory requirement will be to collect food waste only from households that can present a bin to kerbside. In addition, the Scottish Government has stated that it expects Local Authorities to work together and with the waste management industry and Zero Waste Scotland to develop collection systems suited to the unique challenges presented by high density housing”. According to the Scottish Government it has put in place a comprehensive support package (including funding) to assist local authorities in rolling out a food waste collection service to households and that uptake has been high.

Food versus Bio Waste

Collecting food waste separately from other biodegradable wastes generally delivers better quality and greater yields, better environmental outcomes and is less expensive. As a result, the Scottish Government has stated that food waste should be collected separately and “should be treated in Publicly Available Specification compliant Anaerobic Digestion¹ (AD) facilities as

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Anaerobic digestion (AD) is a treatment that composts this waste in the absence of oxygen, producing a biogas that can be used to generate electricity and heat. According to Friends of the Earth; “AD produces a biogas made up of around 60 per cent methane and 40 per cent carbon dioxide (CO₂). This can be burnt to generate heat or

this provides scope to capture the methane produced during processing to produce renewable energy”.

The Government has however said the Regulations will allow, in some circumstances, the collection of co-mingled garden and food collections where it can be demonstrated they deliver equivalent or better environmental outcomes as a separate food waste collection service.

Zero Waste Scotland has been tasked to work with local authorities to produce business cases for food waste collections to determine what kind of collection service would be appropriate for each Local Authority. The Government has stated that it does not intend to police individual decisions taken by each Local Authority in terms of the separate collections of food waste and biodegradable waste and that it will be the responsibility of each local authority to ensure that whatever service is adopted it delivers the required yields and quality.

Availability of recycling information to the public

Whilst households already have an obligation under Section 46 of the Environmental Protection Act to use the bins provided by a local authority in a manner set by the local authorities, to encourage householders to use the enhanced recycling services that will be provided, the Scottish Government has agreed with COSLA that councils will produce an annual statement that will set out the steps being taken at a local level to work towards delivery of recycling targets and the wider zero waste agenda. This is to ensure that as much information as possible is made available to households to encourage a change in attitude towards recycling and reassure them that their collective efforts are making a difference.

To achieve this, the Scottish Government is working with COSLA to ensure Local Authorities produce an annual report which sets out:

- a summary of the destination of material collected for recycling;
- actions to apply the waste hierarchy so as to encourage options that deliver the best overall environmental outcome;
- actions being taken to coordinate investment in infrastructure to promote high quality and quantities of recyclables (Scottish Government 2011a)

The Policy Statement indicated that the Government would only make the reports a statutory requirement in the Regulations if they could not reach agreement with Local Authorities on a voluntary approach. The Scottish Government has said that a voluntary approach has since been agreed.

Thermal Treatment and Landfill Bans

Whilst the aim of the Scottish Government’s Zero Waste Plan and the Waste Regulations is to prevent waste, and reuse and recycle as much as possible, it is inevitable that some waste cannot be recycled or re-used. According to the Scottish Government the Waste Regulations should ensure that the volume and type of materials requiring residual waste treatment, such as incineration, will be greatly reduced. Indeed, although the Scottish Government has said it recognises the role of thermal treatment, it has made clear that: “the feedstock simply won’t be available in the future to feed large-scale plants or an extensive network of incinerators across Scotland”. (Scottish Government 2011a)

electricity or can be used as a vehicle fuel. If used to generate electricity the biogas needs to be scrubbed. It can then power the AD process or be added to the national grid and heat for homes”. (Friends of the Earth 2007)

To support the introduction of regulatory measures requiring separate collection of recyclables including food waste in the Regulations, the Scottish Government is introducing a ban on these materials, when separately collected, going to landfill; this will start at the end of 2013. Unsorted waste will still be able to be sent to landfill.

Similarly, all separately collected materials will no longer be able to be sent for incineration from the end of 2013. However, where separately collected waste is rejected, for example at a materials recovery facility as a result of contamination, it will be possible to send the rejected waste for thermal treatment.

Pre-treatment prior to Incineration

To further avoid key recyclable materials that have not been separately collected from being incinerated, the Scottish Government has proposed a provision in the Regulations requiring best available techniques to be used to remove marketable recyclate (metals and hard plastics) from residual municipal waste prior to incineration.

The Government has proposed that this pre-treatment requirement should apply to existing Energy from Waste facilities from end of 2015.

Ban on biodegradable material to landfill

The Zero Waste Regulations will introduce a landfill ban on biodegradable municipal wastes. According to the Scottish Government, the purpose of the ban is:

- to reduce the volumes of waste being landfilled by directing unsorted waste to pre-treatment.
- to extract remaining resource value from the unsorted waste stream.
- to protect the environment from the significant climate change impacts of landfilling biodegradable wastes.

As a result of this ban, which will be introduced at the end of 2020, all unsorted waste will need to be treated to ensure recyclable material is removed and to create a waste stream which can be used to recover energy.

As a result of concerns raised during the Government's consultation on the regulations that a ban on landfilling biodegradable wastes could present significant problems in respect of some industrial biodegradable wastes, the Regulations have been amended to limit the scope of the ban to biodegradable municipal waste² which, according to the Scottish Government, still accounts for over 90% of all biodegradable waste produced annually in Scotland.

During the Government's consultation a number of respondents raised points around how best to define biodegradable content. As a result, the Government has proposed using the definitions contained in the 2nd Draft of the Biowaste Directive.

Implementation

To aid implementation of the new Regulations, the Scottish Government has proposed establishing a joint implementation programme with Zero Waste Scotland and SEPA. The Government has acknowledged that effective communication and engagement is key to

² Residual municipal waste is also known as black bag waste and will be what is left over after the source separation of recyclables and food waste.

ensuring the Regulations are successfully introduced and complied with. Consequently, the Scottish Government's communication and engagement strategy will include:

- high level campaign work – trade press etc;
- preparation of materials for waste management companies to use when engaging with customers;
- one to one advice to business.

In addition, SEPA will engage with its regulated industries and others to advise on the new requirements, and Zero Waste Scotland has developed a SME support and advice programme with the intention of reaching 3,000 businesses per year. (Scottish Government 2011a)

In addition to increased engagement and communications, guidance will also be provided to coincide with the Regulations coming into force.

Enforcement

To ensure compliance with the Regulations enforcement measures need to be in place. Enforcement provisions already exist in Section 34 of the Environment Protection Act 1990. The power to enforce Section 34 of the Environmental Protection Act 1990 is shared by SEPA and local authorities, and according to the Scottish Government this allows for effective and proportionate enforcement of the key changes made by the Regulations.

The Scottish Government has also indicated it is developing and rolling out an extensive support and communications strategy to assist all those affected by these new measures, including further 'Duty of Care' guidance under section 34. It is the view of Scottish Government that by supporting and working closely with all sectors affected by the Regulations the need for future enforcement action will be greatly reduced.

CONSULTATION RESPONSES

The Rural Affairs, Climate Change and Environment Committee invited consultation responses on the Scottish Government's Policy Statement for the Zero Waste Regulations. This was conducted **before the Government laid the Regulations in Parliament** (on 15 March 2012). This section provides a summary of the key issues which were raised in the responses to the Committee.

By the time of writing, 21 responses had been received. All the responses are on the Rural Affairs, Climate Change and Environment Committee website at <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/46047.aspx>

Many of the consultation responses welcomed the changes the Scottish Government have made to the proposed Regulations following their own consultation exercise. The Scottish Environmental Services Association did express disappointment that when responding to the consultation, the regulations had yet to be laid and that the "Scottish Government's Policy Statement has offered a poor substitute to carrying out a detailed review of the draft regulations".

KEY ISSUES

Commencement Date and timescales for introduction of bans

A common concern, raised, for example, by both local authorities and the Federation of Small Businesses (FSB) was the issue of the commencement date of the regulations of end 2013. The FSB has suggested that in line with best regulatory practice, the common commencement date should be 1 October. According to the FSB, common commencement dates ensure that new regulations take effect at the same time to make it easier for businesses to be aware of upcoming regulatory change.

WWF Scotland expressed disappointment that the dates for collection of domestic food waste and a landfill ban on biodegradable material had been put back following the Government's initial consultation held in January 2011.

Costs of observing the Regulations

Both business and local authorities expressed concern about the potential financial implications of the new regulations. West Lothian Council stated that whilst it welcomed the current support being offered by Zero Waste Scotland to support food waste collections, it understood that this support was only available for up to three years and then there would be a funding gap. West Lothian Council wrote: "it is concerning that beyond the initial 3 year period, this legislative change is unfunded. In addition, new glass collections and associated costs may be required, and again this is unfunded legislative change." It concluded by stating; "whilst the Council agrees with the general direction of travel of the new regulations, the full financial consequences appear significant at a time of shrinking budgets. There should therefore be a greater emphasis on practical and financial support to allow the council to meet its full shared zero waste objectives".

Similarly East Lothian Council questioned whether introducing an additional collection service is the best use of public money in the wider context of cuts to budgets and other local services.

From a business perspective, the British Hospitality Association (BHA) suggested that the cost of the regulations to the industry would be "significant for smaller hotels, guest houses, B&Bs,

caterers and restaurants". For example, the BHA has suggested that the segregation of waste for separate collection will be mandatory for "Scotland's 17,000 commercial and public sector catering establishments including 6,000 restaurants, pubs and hotels. It will also affect a further 2,000 snack bars, cafes and take-aways". As a result the BHA has suggested that a more detailed economic study should be undertaken into the impact of the regulations despite the implementation date having been put back to 2015 for SMEs.

The Scottish Environmental Services Association throughout its submission raised concerns that the Scottish Government's approach in regulating might inhibit natural market forces suggesting that; "The Scottish Government must be wary of regulatory intervention in this area which could distort markets and may not achieve the desired increase in domestic reprocessing capacity".

Too prescriptive

One issue raised by consultation respondents was the danger that regulations will be too prescriptive. The response from Aberdeen City Council stated that for the Regulations to be successful they will need to be applicable for at least 15 years and therefore "it is imperative that, by over-prescription of solutions, the regulations should not hinder the adoption of the most cost-effective and successful recycling collection and treatment systems".

East Renfrewshire Council supported this view commenting; "It is dangerous to be too prescriptive on what type of technology should be used for treatment of organic waste, and the folly of this can be seen throughout the country in contracts which were influenced by Government which are no longer fit for purpose! The debate about whether AD or IVC is the better form of treatment should be left to Authorities to conclude knowing all local circumstances. In addition, current procurement rules make it very difficult to promote one technology over another, and the Government should seriously consider the undue promotion of AD over IVC in several parts of the policy".

Renfrewshire Council supported this point suggesting that; "The legislation that will be introduced must be realistic and workable, clear in their intention and accompanied by comprehensive guidance to ensure that they can be understood easily by all concerned. The targets set must be achievable and should bring about the results the Government strives for in improving public confidence in recycling to help reaffirm Scotland's position as a recycling nation".

East Renfrewshire Council suggested that local authorities required more information from the Scottish Government with regard to the capturing of recyclates within residual waste. According to East Renfrewshire; "If it is truly the Government's intention to regulate and control the treatment of residual waste and set targets for the pre-sort of residual waste then Authorities should know now, so that they can build them in to current procurements. Most of these plants are only offering between 5-10% recovery on residual waste, which means 90-95% of all residual material is effectively being thermally treated".

Both the BHA and the Catering Equipment Suppliers Association (CESA) suggested that the proposed regulations were not flexible enough and as an example cited the proposal to ban food waste disposal units (macerators) without being aware of a full justification for the move.

Issues for rural local authorities

Predominantly rural local authorities such as the Western Isles and the Scottish Borders raised concerns that the requirements of the Regulations would place specific burdens (both financial and logistical) on rural and low population density areas. Scottish Borders Council suggested that the ban on using macerators for the disposal of non-domestic food waste is dependent on

the establishment of food waste collections to ensure the waste doesn't go straight to landfill and that "Rural areas do not lend themselves to non-domestic food waste collections which may mean material will go to landfill until the landfill ban comes in place".

Co-mingled domestic collections

The Scottish Environmental Services Association (SESA) welcomed the Scottish Government's confirmation in the Policy Statement that co-mingling of dry recyclates where treatment in a Material Recovery Facility (MRF) would comply with the Waste Framework Directive. However, they went on to oppose the Government's suggestion that co-mingled collection followed by MRF treatment would need to achieve the same quality outputs as kerbside sorting would achieve as they believe that "MRF outputs should be recycled as much as possible into high quality outputs". SESA also suggested that kerbside sort systems also produce varying standards of material for recycling and therefore, "benchmarking to 'kerbside-sort' standard is neither a desirable nor a practical proposal".

East Dunbartonshire suggested that there still remains a lack of clarity on the acceptability criteria for co-mingled collections of both dry recyclables and food/garden waste. The Council suggested that this "clearly has an impact when determining future collection arrangements and further clarity will be essential...."

Aberdeen City Council suggested that rather than threaten the quality of the product being collected; co-mingling can still ensure high quality material is available for recycling. This is partly as a result of improved technologies in the material sorting industry. In contrast, WWF Scotland suggested that "evidence from the paper and glass industries shows that co-mingled systems have a negative impact on the quality of the recovered paper and glass and as such reduce the environmental benefit and reuse value of these materials".

In their consultation response, WWF Scotland also suggested that as the policy statement does not propose a requirement for households to separate waste and use recycling systems where available, this may lead to; "a failure to remove key recyclables prior to landfill which risks significant volumes of material being disposed to landfill".

Scottish Water welcomed the proposal to allow co-mingling of food and garden waste suggesting that; "there are significant environmental benefits to be gained from this more flexible approach. Utilising both food waste and garden waste together in dry anaerobic digestion facilities will maximise the total renewable energy produced". In contrast, SESA suggested that joint collection of food and garden waste risked undermining the Zero Waste Strategy and was in contrast to the Government's own view that separate food collection is more cost effective and provides the best environmental outcome.

Incinerators

WWF Scotland expressed concern that valuable materials may end up being incinerated as a result of the allowance of co-mingling and the poor quality of the recyclate which emerges from the pre-treatment of this waste; "Given that householders only have to be 'offered' separate recycling collection facilities rather than required, we believe significant quantities of mixed waste containing valuable materials will still be collected. Whilst pre-treatment of this waste stream is required before incineration, the quality of the recyclate is likely to be relatively poor and hence limit how 'marketable' the materials are and thus act as a fairly ineffective driver to avoid incineration".

WWF Scotland suggest that as the word "marketable" is undefined it is unclear who will make the decision on what waste meets the criteria.

SESA welcomed the proposal to pre-treat waste ahead of incineration but suggested that the costs of recovering recyclates ahead of incineration hadn't been fully set out in the Business Regulatory Impact Assessment. In addition, SESA suggested that the Policy Statement introduced uncertainty by suggesting that target materials for recovery through pre-treatment would be reviewed over time as this risks having redundant assets or potentially expensive modification to plant designs.

Source Segregation

The Scottish Food and Drink Federation (SFDF) welcomed the commitment in the policy statement that compliance with the requirement for food businesses to undertake source segregation should not be required if it is seen as an 'unreasonable requirement'. However, the SFDF asked for clarity about what would be deemed unreasonable.

SFDF also raised concerns about the requirement for businesses to present food waste for separate collection. SFDF queried whether the requirement would only apply where a collection service was available if that was provided by a local authority or whether a service provided by private sector activated this clause of the regulations. SESA suggested that due to a VAT exemption for local authorities it could potentially provide a business waste collection service for 20% less than the private sector. To address this, SESA suggested that the regulations should stipulate that local authorities could only provide a service where no other provider is available.

SESA welcomed the requirement on businesses to source segregate dry recyclables by 2013 but suggested the Scottish Government still needs to define the extent to which recyclable materials should be segregated at source and in addition should be careful not to provide exemptions to businesses which combine to undermine the objectives of the Zero Waste Plan.

Use of Food Macerators versus Anaerobic Digestion

In their response, Scotland's 2020 Climate Group Waste and Resources sub-group advocated that the use of food maceration units should be banned in all but essential situations. In addition, the Group supported the increased use of Anaerobic Digestion processes.

Scottish Water welcomed the ban on use of food macerators suggesting that as well as benefiting from ensuring that such material is collected and treated to maximise its value, "this will also help protect sewers from clogging".

In contrast, the British Hospitality Association suggested that the banning of Food Waste Disposal Units (macerators) would lead to 35,000 tonnes of food waste which currently goes to sewers would need to go to landfill because Scotland does not currently have the processing capacity to deal with such an amount of food waste. The Catering Equipment Suppliers Association (CESA) also suggested that the use of macerators should continue to be allowed as there is no scientific basis for banning them. Indeed, the CESA state that; "Over decades of use, food waste disposers have proved in robust and extensive scientific tests to be one of the most environmentally sound, carbon and cost efficient means of capturing and recovering value from food waste". In addition, CESA suggest there is no evidence that macerators cause damage to the sewage system.

The CESA also outlined the potential costs of a ban on macerators and replacement with a collection service stating that; "Industry experts predict that the costs, for collection and treatment alone, will be in the range of £100 per tonne of food waste. For the average restaurant this would be an annual collection charge of £4,400, £18,000 for larger hotels, an additional £15,600 for individual universities and £12,500 for hospitals. For many smaller undertakings pubs, cafes and bed and breakfast establishments the impact will be considerable".

Enforcement Powers

Local Authorities (in particular Scottish Borders and Highlands Councils) along with WWF Scotland suggested that additional powers should be given to local authorities to support awareness raising. Highland Council suggested that “existing legislation should be amended to enable fixed penalty notices to be applied. In addition, they suggested that any revenues raised in the Highland local authority area should be kept in the Highland area. In addition, Highland Council suggested the Scottish Government could give discretionary powers to local authorities to introduce direct variable charging.

The FSB suggested that it is important that a Scotland wide approach for implementation and enforcement so avoiding different approaches by local authorities and a post code lottery for affected businesses.

Business Regulatory Impact Assessment

Both the BHA and CESA questioned the value of the Government’s Business Regulatory Impact Assessment which accompanied the policy statement. In particular, the CESA suggested that the Impact Assessment fails to clearly address the cost of the ban to the most affected segment of the Scottish economy, in particular catering services.

Linked to this, the FSB suggested that more case studies should be developed to, “both to better understand the cost and time implications of the regulations for small businesses and to provide realistic advice and guidance of what will be expected of them”.

‘Pay as you throw’ schemes

WWF Scotland suggested that the Scottish Government should look at introducing a ‘pay as you throw’ scheme for residual non-recycled or composted waste. Examples of this approach abroad have shown that schemes such as this can increase recycling levels.

Site Waste Management

Scotland’s 2020 Climate Group Waste and Resources sub-group suggested that construction and demolition activities account for a third of all the waste generated in Scotland. As a result, they have suggested that the Scottish Government should continue to promote Site Waste Management Planning (SWMP) to the construction industry as SWPM’s are a proven methodology “for driving down wastage of construction materials”.

Guidance and training

A number of respondents suggested that clear and comprehensive guidance would be required when the regulations were introduced. For instance, COSLA stated it would welcome “further supporting guidance and standards to come forward as soon as practicable following the regulations”.

In addition, East Lothian Council suggested that it would be important that “full training is made available to those officers for whom additional enforcement responsibilities are expected as well as clear powers to ensure compliance with the new Duty of Care expected from businesses”.

ANNEXE A – SCOTTISH GOVERNMENT’S ZERO WASTE PLAN ACTIONS

1. The Scottish Government will develop a Waste Prevention Programme for all waste, in line with the EU Waste Framework Directive, in order to place prevention at the heart of zero waste policy and action.
2. The Scottish Government will introduce a long term target of 70% recycling for all waste arising in Scotland by 2025, regardless of its source, based on improved data and supported by sector-specific programmes of work. Annex A sets out the range of targets which will be used to measure progress towards delivery of the Zero Waste Plan.
3. The Scottish Government will use powers under the Climate Change (Scotland) Act 2009 to introduce regulatory reporting to improve data on resource use by the business sector by October 2010.
4. The Scottish Government will introduce progressive bans on the types of materials that may be disposed of in landfill, and associated support measures, to ensure that no resources with a value for reuse or recycling are sent to landfill by 2020. Annex C provides further information.
5. The Scottish Government will introduce a carbon metric for waste, to identify and prioritise the materials with the highest environmental benefit for recycling, leading to better environmental outcomes, and a more efficient economy. This metric will complement the existing tonnage metric. Annex A provides further information.
6. Zero Waste Scotland will identify key waste streams and sectors, and establish sector-specific programmes of work to deliver the Zero Waste Plan. This will build on previous successes such as those achieved through voluntary agreements, including the Courtauld commitment by the retail sector to cut its waste, and the commitment by the construction industry to halve waste sent to landfill.
7. The Scottish Environment Protection Agency in partnership with the Scottish Government will develop further and implement the Better Waste Regulation Action Programme to support delivery of the Zero Waste Plan, including the development of a “waste to resource” tool kit for resource managers. This will introduce minimum standards for recycled materials, which will be periodically reviewed in order to progressively improve the quality of recyclate. This work will directly inform the development of new and existing resource recovery infrastructure.
8. To support the introduction of landfill bans, the Scottish Government will introduce regulations to drive separate collection and treatment of a range of resources in order to maximise their reuse and recycling value, and generate market supply. The initial focus will be on separate collection of food waste, in order to recover its material and energy value and avoid contamination of other waste materials. See Annex C for further Information.
9. Zero Waste Scotland will develop and promote a sustainable procurement toolkit, for use by both public and private sector, to encourage the purchase of products containing recycled content and minimise overall resource use. This will support the delivery of the Scottish Sustainable Procurement Action Plan published in October 2009.
10. The Scottish Government, with the enterprise agencies, Scottish Environment Protection Agency, Scottish Funding Council, Sustainable Development Commission Scotland and

other public bodies, will implement the forthcoming Low Carbon Economic Strategy. This will include a strategy for the development of the Environmental and Clean Technologies sector. In particular, the Scottish Government will encourage and support investment in innovative resource management technologies and will support the utilisation of renewable energy generated from resource management facilities, thereby contributing to Scotland's renewable energy targets.

11. The Scottish Government, through Zero Waste Scotland, will continue to support the development of collection and reprocessing capacity for plastics, and review what further specific support may be required to develop collection and reprocessing capacity for other materials.
12. The Scottish Government will commission a study during 2010 into the implementation of existing producer responsibility directives and initiatives in Scotland (including plastic bags, electronic equipment, batteries, and packaging), to determine how revisions could be made to drive waste prevention and recycle markets in Scotland. The study will also look at options for extended producer responsibility and "take-back" schemes in Scotland.
13. Zero Waste Scotland will develop a programme to support continual improvements in health and safety and workforce skills in the resource management sector.
14. The Scottish Government will introduce regulatory measures to support the delivery of landfill bans, by ensuring energy from waste treatment is only used to recover value from resources that cannot offer greater environmental and economic benefits through reuse or recycling. These measures will supersede the current 25% cap which currently applies only to municipal waste, and are likely to result in similar amounts of resources being available for energy from waste treatment.
15. The Scottish Government, with local planning authorities and the Scottish Environment Protection Agency, will ensure the land use planning system supports the Zero Waste Plan through the consolidated Scottish Planning Policy (SPP), the revision of waste planning guidance (Planning Advice Note 63) in 2010 and the provision of local waste infrastructure mapping and data.
16. Zero Waste Scotland, will develop good practice commitments for resource management collection and services provided to householders and small businesses. The aim will be to encourage the resource management sector to sign up to these commitments so that users have consistent expectations of services, leading to increased public and business participation and cooperation.
17. Scottish Futures Trust will provide a service that will enable Local Authorities to achieve value for money in the procurement of resource management infrastructure that supports delivery of the Zero Waste Plan.
18. Zero Waste Scotland will develop and implement, in cooperation with local authorities, a consistent, targeted, coordinated and phased education and awareness programme to encourage participation of the public and businesses at national and local levels to meet zero waste objectives.
19. Zero Waste Scotland, in cooperation with local authorities, will review the success of measures to influence waste behaviours, including incentives, and from the results of the review, encourage the development of schemes to drive reductions in waste and improvements in recycling performance.

20. Zero Waste Scotland will encourage increased “recycling on the go” opportunities to stimulate public behaviour change, including the provision of guidance during 2010 to local authorities and other providers of waste facilities.
21. The Scottish Government, with local authorities, the Scottish Environment Protection Agency (SEPA) and Zero Waste Scotland, will seek to raise awareness of the need to take local responsibility for waste, to support development of local infrastructure for resource management. Support will also include the development of a tool, based on SEPA data, to assist local authorities in identifying the infrastructure needed to collect, sort, recycle and recover all waste in Scotland.
22. Zero Waste Scotland, with partners, will assess existing support and resources on waste management for education providers and develop appropriate support and resources to integrate zero waste objectives into teaching and learning from early years to tertiary.

SOURCES

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