

2nd January 2007

Consultation Response to the revised Waste Framework Directive

Introduction

This document provides a response to the consultation on the proposal for a revised Waste Framework Directive (WFD) that incorporates the current Waste Framework Directive, the Waste Oils Directive and the Hazardous Waste Directive.

The Document reflects the views of the **Environmental Association for Universities and Colleges (EAUC)**, the **sustainability Champion for Further and Higher Education in the UK**.

In preparing this response the Association has canvassed the views of the 200 universities and colleges throughout the UK that form its membership.

The response is divided into two sections. Section 1 provides feedback on general points relating to the proposal, Section 2 responds to specific questions asked by the consultation and also makes comment on other aspects of the particular Articles, as appropriate. Responses in Section 2 are shown in red italicised text.

It should be noted that EAUC has not responded to all of the questions posed by the consultative document as there are a number of areas in which it has insufficient expertise, for example the Regulatory Impact Assessment, to provide properly informed input.

Section 1 - General Points

1.1 Adoption of a new Directive

The inclusion of the requirements of the Waste Oils and Hazardous Waste Directives within the proposed WFD is generally welcomed by EAUC as a step that should simplify legislation in these areas. We would, however, urge that where the directive makes use of or reference to definitions or other requirements embedded in other Directives or Regulations then the wording of these sections is provided in a foot note or appendix of the WFD. This would provide clarity and help ensure that the legislation is more easily understood.

1.2 Waste in the further and higher education sector

The sector is unusual, if not unique, in having organisations that produce a very wide range of waste streams. In the majority of cases the quantity of waste in each of these streams is low in comparison to other sectors such as industry. For larger organisations, however, these waste streams can be considerably more complex than would be encountered in other sectors due to the research bases for much of the work. For this reason it is essential that legislators think beyond the traditional stakeholder groups of business, industry and householder. It is important that the sector does not find that it requires to comply with legislation that was targeted at industrial scale activities when a waste producer may be working at the level of milligram quantities.

An example from the Animal By-product (ABP) legislation is the fact that all experimental animals are classed as category 1 ABPs, where as wild animals not infected with communicable

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diseases are outwith the scope of the legislation. This can only have arisen from a lack of understanding of the requirements of animal experimentation as the vast majority of animals used for these purposes will be specially bred and certified as disease free. The fiscal burden of such anomalies can be considerable for the sector. It is therefore that the regulation and level of bureaucracy faced by the sector is proportional to the actual risk from its waste arisings.

1.3 'Cradle to grave' responsibility

EAUC believes that it is essential to have proper controls and accountability for waste at all stages of its existence. However legislation should recognize that it is completely impractical for the waste producer to have an absolute responsibility from 'cradle to grave'. There should be an acceptance, made clear in EU legislation that the producer has a duty 'as far as is reasonably practicable'. Whilst this approach can also present the problem of deciding what IS practicable, it has been successfully been used in health and safety legislation and could be similarly effective in the context of duty of care for waste.

1.4 Definition of waste and the end of waste

EAUC believes that the current definition of waste is a severe barrier to good environmental protection. It is essential that all reasonable steps are taken to ensure that the legislation supports the reuse and recycling of articles, products and materials. In support of this there must be the flexibility that allows individuals, businesses and organisations to donate, sell or re-use these with the minimum of bureaucracy and cost. Given that this use of articles, products and materials does not pose a risk to the environment or human health then there is the potential for considerable social, economic and environmental benefit from this approach.

EAUC believes that the proposed definition of waste and the end of waste does not go far enough in meeting these aims

The definition of biomass currently differs between UK regions. A single European definition would clarify the situation and harmonise the waste for which Renewable Obligation Certificates can be allocated for renewal fuel sources.

Section 2 – Response relating to specific Articles

Article 1 – Subject Matter (paragraphs 3.9-3.10 above)

Q1: Do you consider that Article 1 fulfils the Commission's intentions. If not, in what way should it be revised? For example:-

- (a) Should the terms of the waste hierarchy be set out more explicitly in Article 1 - as in the Environment Council's Conclusions – see Annex 5 (page 137); and

It would be clearer if the terms of the waste hierarchy we set out in Article 1.

(b) Should Article 1 contain clear references to the environmental and human health objectives of Article 7 of the revised WFD which re-enacts Article 4 of the existing WFD?

Yes

Article 2 – Scope (paragraphs 3.11-3.15 above)

Q2: What are your views on the revisions which the Commission proposes to make to the list of wastes excluded by Article 2 from the scope of the revised WFD? For example:-

(a) Should the list of excluded wastes be more extensive and, if so, which wastes should be excluded and on what grounds;

Article 2 should include a form of words that allows articles, products and materials that can be used or re-used to be excluded from the definition of waste. It should be possible to impose a duty to ensure that these are handled in such a way as to avoid risk to the environment, just as exists if these were new.

The current definition is a barrier to waste minimization. It imposes controls on used items, by-products etc that do not exist for the same items if they are 'new'. Economic advantages could also arise from such a change.

(b) Should the list of excluded wastes be more limited and, if so, which wastes should remain within the scope of the WFD and what on grounds; and

(c) Do you agree with the Commission's proposal to reverse the AvestaPolarit judgment and so to preclude Member States from relying on national legislation to control certain wastes (e.g. decommissioned explosives)?

Simplification of waste legislation should also include animal by-products (ABPs). ABP legislation applies to much work undertaken in the tertiary education sector and yet it is clear from the legislation that this aspect had not been considered. The exclusion of ABPs used in accordance with the ABP Regulations has the potential to be a positive step, although the Regulations themselves may require amendment to bring positive benefit to the sector.

Whilst the proposal to exclude materials such as faecal matter and straw from the list of waste would be welcomed by the sector, there must be clarification on how this relates to the definition of this material as ABPs.

Article 3 – Definitions (paragraphs 3.16-3.21 above)

Q3: What are your views on the revisions which the Commission proposes to make to the list of terms defined in Article 3 for the purposes of the revised WFD? For example:-

(a) Are the revised definitions practicable and will they provide the greater certainty and clarity essential for both competent authorities and industry/businesses; and

(b) Should any of the other definitions in the existing WFD be revised or new definitions introduced for other terms used in the revised WFD?

*As indicated above I believe that the definition of waste **must** be amended to facilitate reuse, recycling etc.*

Article 3 should include:

- *A definition of 'discard'.*
- *Again, in the spirit of reducing bureaucracy, one possible way of ensuring that 'waste' could be easily and economically used/re-used might be to make an appropriate definition of 'discard'. As an example: if an individual or business no longer wishes to keep and use a vehicle or a property they can sell it. It is not classed as waste. This is presumably because in law they are not seen as 'discarding' it. This approach could also be taken with other items that the holder ('waste producer') knows could be used or has economic value.*
- *The definition of 'disposal'. There is room for confusion between the terms disposal and destruction when considering duty of care.*

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- *The definition of 'recovery'.*
- *A definition of 'secondary product'.*

Article 5 – Recovery (paragraphs 3.22-3.25 above)

Q4: What are your views on the definition of “recovery” proposed by the Commission in Article 5 of the revised WFD? For example:-

(a) Do you consider it practicable and/or environmentally sound to require Member States to take the necessary measures to ensure that “**all** waste undergoes” waste recovery operations. For example, do you think that there is currently sufficient capacity in the UK to ensure that all waste undergoes recovery and, if not, what level of investment would be required to provide sufficient capacity;

No. There are certain wastes produced by the tertiary education sector for which recovery would not be an environmentally or fiscally sound option for example, certain hazardous wastes and waste contaminated with hazardous material.

(b) Do you consider that the substitution of resources should be the sole criterion in the classification of an operation as a recovery operation – rather than being the principal aim of an operation;

Within the constraints of the protection of the environment, human health and fiscal prudence it should be the principal aim.

(c) Do you consider that the definition of recovery should be based on the concept of substitution of resources in the economy as opposed to in a specific plant;

Yes

and

(d) Do you consider that the Commission should be enabled to adopt efficiency criteria by means of comitology – which would have the practical effect of classifying operations as disposal operations where the efficiency criteria are not met?

No, minimum standards should be set and that member states should be permitted to exceed this by use of national legislation if they desire.

Article 6 – Disposal (paragraphs 3.26-3.27 above)

Q5: What are your views on the definition of “disposal” proposed by the Commission in Article 6 of the revised WFD? For example:-

(a) Do you consider it practicable and/or environmentally sound to define disposal as something that happens only where recovery is not possible;

No, there may be circumstances where disposal is possible but not environmentally sound.

and

(b) Do you consider that the Commission should be enabled by means of comitology to add specific operations to the list of disposal operations set out in Annex I where, despite substitution taking place (i.e. a purported waste recovery operation), the results indicate that the operation has only a low potential?

Yes, so long as a full evaluation has been undertaken. This could centralise the process and prevent duplication of evaluation by individual member states.

Article 9 – Costs (paragraphs 3.28-3.29 above)

Q6: What are your views on the revision of the “polluter pays” principle proposed by the Commission in Article 9 of the revised WFD? For example:-

(a) Do you consider that an explicit reference to the “polluter pays” principle should be retained in the revised provision or is this unnecessary;

Yes. The Directive should state this principle.

(b) Do you consider that the application of the “polluter pays” principle should remain limited to waste disposal or should it be extended to waste recovery; and

The principle should apply throughout the entire life cycle for the waste. Waste recovery may, in fact, reduce the fiscal burden if the recovered waste has a commercial value.

(c) Do you consider that application of the “polluter pays” principle should continue to apply to “the producer of the product from which the waste came” or should it be limited to “anyone whose activities produce waste”?

In many cases it is appropriate that the producer of the product should be liable to a fiscal responsibility so as to encourage the principles of good design, reuse, recycling etc. There are circumstances, however, when this is likely to be inappropriate – an extreme example would be that it is unreasonable for the producer of a food product (eg apples) to be responsible for that product when it becomes waste. It would be reasonable for the responsibility to apply to the packaging. A broadening of the areas in which the producer pays could be fruitful (eg furniture). The landfill tax is sufficiently widely applicable to ensure that the majority of waste producers pay towards their pollution liability, although this link may not be entirely clear to householders. There is little need to extend this, although awareness raising could be fruitful.

Article 10 – Network Of Disposal Operations

(paragraphs 3.30-3.31 above)

Q7: What are your views on the proposed change in Article 10 of the revised WFD to require the establishment of an adequate network of disposal installations to take account of “best available techniques” (“BAT”), as defined in the IPPC Directive, instead of “best available technology not involving excessive costs”?

Whilst this is a laudable target there is likely to be a considerable financial burden. A phased approach to adoption should be considered.

Article 11 – End-Of-Waste (paragraphs 3.33-3.36 above)

Q8: What are your views on the end-of-waste provisions proposed in Article 11 of the revised WFD? For example, do you consider that these proposals will fulfil the Commission’s aims which may be summarised as:-

- improved environmental performance of recycled products as economic operators seek to attain the level required for their recycled product no longer to be considered a waste;
- greater certainty and predictability for purchasers of recycled products or materials;
- regulatory simplification for low-risk wastes used as secondary materials; and

- a high level of protection for human health and the environment?

NOTE: In responding to this question, stakeholders are requested to draw a distinction between **(a)** the enabling provision proposed in Article 11 of the revised WFD and **(b)** the subsequent adoption by comitology of (i) the selected waste streams and (ii) the environmental and quality criteria. At this stage is the Government is primarily interested in stakeholders' views on (a). This is because (b) is dependent on the adoption of (a); and in the normal way the Government will consult stakeholders on subsequent proposals by the Commission on (b)(i) and (ii).

*The approach to this must be aligned with a consideration of the definition of waste. If an appropriate definition of waste is adopted then there will be fewer categories for which a consideration is required to determine the end of this waste. In light of this the Directive does not make clear that products, materials and substances could be surplus to the owner/holder's requirements, fit for use elsewhere without risk of negative impact and therefore **should not be waste**. Article 11 seems to imply the need for a process of recovery that need not be required. Beyond these comments a sensible, justifiable minimum standard of quality is, in principle, a positive step towards achieving a stable market for recycled/recovered waste.*

Articles 12-17 – Hazardous Waste

(paragraphs 3.38-3.41 above)

Q9: What are your views on the repeal of the Hazardous Waste Directive and its incorporation into the revised WFD on the basis proposed by the Commission? For example, do you consider that it should be a condition that hazardous waste mixing operations should conform with BAT (Article 16)?

The general principles of the WFD regarding protection of the environment are equally relevant to hazardous and non-hazardous waste streams. Comments made earlier in this response regarding BAT are equally applicable to hazardous waste. It may, however, be prudent to adopt more stringent time scales for phase in of BAT in relation to hazardous waste. Timescales should be appropriate to environmental risk.

Article 16 – Separation

The Directive should state that mixing of hazardous waste is not permitted except in the circumstances described. This alternative approach to wording adds weight and clarity to the requirements.

Article 18 – Waste Oils (paragraphs 3.42-3.44 above)

Q10: What are your views on the repeal of the Waste Oils Directive on the basis proposed by the Commission in Articles 18 and 38 of the revised WFD? For example:-

- (a) Do you consider that the requirement to give priority to the processing of mineral waste oils by regeneration should be repealed; and
- (b) Do you consider that the requirement to ensure the collection and handling of mineral waste oils should be retained?

This decision should be informed by the outcome of a lifecycle/environmental assessment of the alternatives.

Article 19 – Permits (paragraph 3.45 above)

Q11: What are your views on the proposal in Article 19(4) of the revised WFD that all permits covering energy recovery must include a condition that the recovery of energy is to take place with a high level of energy efficiency?

It may be inappropriate for certain low risk operations being carried out by the waste producer on his own waste to require permitting. At the very least an exemption may be appropriate but application of an exemption requires a level of bureaucracy that may not be justifiable. Although Article 20 states that Article 19(1) will not apply to establishments that have a permit under Directive 96/61/EC it would provide greater clarity if this WFD were to state which undertakings WOULD require permitting under the WFD.

The decision on energy recovery should be informed by the outcome of a lifecycle/environmental assessment of the alternatives.

Article 21 – EU-Wide Minimum Standard For Disposal And Recovery Operations (paragraphs 3.47-3.51 above)

Q12: What are your views on the proposal in Article 21 of the revised WFD that the Commission should be able to adopt by comitology EU-wide minimum standards in permits for waste disposal and recovery operations? For example:-

(a) Do you consider that the responsibility for standard setting in permits for waste disposal and recovery operations should be transferred to the Commission or should remain with Member States' competent authorities to determine on the basis of the risk posed by each operation;

Minimum EU-wide standards should be set.

(b) Do you consider that the adoption of EU-wide minimum standards for waste disposal and recovery operations would have (i) a positive or negative environmental impact in the UK and (ii) a positive or negative economic impact on UK industry/business; and

Ensuring a minimum standard should have a positive environmental impact as it would reduce the risk of negative impact from states that would otherwise adopt a lower standard. It is important that member states can choose to impose higher standards locally.

This should also help to create a level playing field for business and generally be a positive effect.

(c) Do you consider that the adoption of EU-wide minimum standards for waste disposal and recovery operations would have a positive or negative impact on recovery/recycling targets and landfill diversion rates in the UK?

Initially such standards may have an adverse effect. If a minimum standard is applied during recovery operations then this should, ultimately, ensure confidence in the quality of the recovered waste and help to stimulate demand, thereby encouraging an expansion of the market and a reduction in waste going to landfill.

Articles 22-24 – Exemptions (paragraphs 3.52-3.54 above)

Q13: What are your views on the permit exemption provisions proposed in Articles 22-24 of the revised WFD? For example, do you consider that the general rules adopted by Member States should be based on BAT?

Yes, provided BAT is determined with full consideration of the overall impact of employing the technique (including, for example, the impact of production of equipment and materials required to perform the technique) vs alternatives. That is, consideration of more than the protection of the environment at point of use should inform the decision.

Article 25 – Registration (paragraph 3.56 above)

Q14: What are your views on the registration provisions for professional collectors etc of waste proposed in Article 25 of the revised WFD? For example:-

(a) Do you consider that registered establishments or undertakings should be required to “comply with certain minimum standards” set by the Commission by means of comitology; and

If these establishments are not subject to permit requirement then they would, presumably, be engaged in very low risk activities. It would therefore be overly onerous to require minimum standards.

(b) Do you consider that Member States should be required to ensure that their national systems of waste collection and transport ensure that waste collected and transported is delivered to appropriate treatment installations?

Yes, but see also comment in General Comments section of this response on page 1 about waste producer and ‘cradle to grave responsibility’.

The register of establishments should be made publicly available.

Articles 26-28 – Waste Management Plans

(paragraphs 3.57-3.60 above)

Q15: What are your views on the proposals in Articles 26- 28 of the revised WFD to widen the scope and content of the waste management planning requirements? For example:-

(a) What are your views on the need for waste management plans to contain the information set out in Article 26(3)(a)-(h) of the revised WFD;

Generally a positive inclusion as they should inform planning and decisions about resource targeting and allocation. Revision schedule should, perhaps be revised to 7 years to make task less onerous.

(b) Do you consider that the revisions proposed would benefit the environment and human health or result in the imposition of administrative burdens and costs without a commensurate benefit to the environment and human health; and

In the medium to long term these should produce benefit. However, see also revision schedule (at (b) above).

(c) Do you consider that the revisions proposed would help to fulfil the revised WFD’s objectives or divert resources from the fulfilment of those objectives?

Ultimately these should be helpful.

Articles 29-31 – Waste Prevention Programmes

(paragraphs 3.61-3.64 above)

Q16: What are your views on the proposals in Articles 29- 31 of the revised WFD to require Member States to draw up waste prevention programmes? For example:-

(a) Do you consider that Member States should be required to assess the opportunities for taking all 16 of the measures set out in Annex IV to the revised WFD;

Yes

(b) Do you consider that the Commission's proposals will fulfil their aim of breaking the link between economic growth and the environmental impacts associated with the generation of waste; and

(c) Do you consider that the Commission's proposals will prove beneficial in terms of waste prevention and the meaningful measurement of progress in waste prevention or result in the imposition of administrative burdens and costs without such commensurate benefits?

Article 32 – Inspections (paragraph 3.65 above)

Q17: What are your views on the proposal in Article 32(2) of the revised WFD to require competent authorities' inspections of collection and transport operations to cover the origin and destination of **all** waste (i.e. hazardous and non-hazardous waste) collected and transported?

Yes, essential to ensure that all waste is being handled by the best route.

Article 33 – Record keeping

The Directive should state the length of time operators of undertakings referred to in Article 19(1) require to preserve records.

Annex II (R1) – Municipal Solid Waste Incineration

(paragraphs 3.66-3.69 above)

Q18: What are your views on the proposal in Annex II to the revised WFD to classify as waste recovery operations "incineration facilities dedicated to the processing of municipal solid waste only" which meet a specified energy efficiency threshold? For example:-

(a) Do you consider that the application of an energy efficiency threshold for municipal incinerators could generate both economic and environmental benefits and facilitate achievement of the targets for diversion from landfill;

(b) What are your views on the efficiency threshold and the formula proposed by the Commission – is the proposal practicable and is the proposed threshold set at the right level or too high or too low; and

(c) What do you consider will be the practical implications for the UK of classifying as recovery operations municipal waste incinerations which meet the proposed energy efficiency threshold?

Subsidiarity And Proportionality (paragraphs 3.5-3.8 above)

Q19: Do you agree with the Commission's view that the revised WFD complies with the principles of subsidiarity and proportionality? If not, why do you consider that the revised WFD does not comply with those principles?

Objectives Of The Revised WFD (paragraphs 3.2-3.4 above)

Q20: Do you agree that the revised WFD fulfils the objectives set by the Commission? If not, why do you consider that the revised WFD does not fulfil those objectives?

No. It does not yet effectively create a definition of waste that ensures that items that are currently waste (and are of low risk to the environment) but are suitable for re-use or as a for other materials are NOT classified as waste, thereby reducing bureaucracy and benefiting the environment.

Partial RIA (Annex 2 - page 84 below)

Q21: The Partial RIA at Annex 2 (page 84 below) assesses the costs and benefits of the proposals in the revised WFD:-

(a) Do you consider that the costs and benefits of the proposals have been accurately assessed; and

(b) If not, what evidence are you able to provide in support of your view that the costs and benefits have not been accurately assessed?



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