

6th October 2008

Consultation on Potential Legislative Measures to Implement Zero Waste

This response provides the views of the following organisations associated with higher and further education sector (HFE) in Scotland:

- **The Environmental Association for Universities & Colleges (EAUC)**
- **The Association of Scotland's Colleges (ASC)**

It considers

- the perceived implications for the sector
- the group's views on the wider implications

There was general agreement amongst the respondents; however, where a respondent's views differed from the majority these have been included.

GENERAL POINTS OF RELEVANCE TO STRATEGIC ASPECTS OF THE CONSULTATION

A harmonised approach to legislation

There is overwhelming support within the HFE sector for the concept of zero. However, a serious consideration prior to introducing legislation in Scotland is the continuing divergence in waste legislation between Scotland and the UK as a whole. There are a number of aspects that we believe support a UK wide approach to waste legislation, some of which impact directly on the issues raised in this current consultation:

1. Waste legislation throughout the UK is driven by requirements handed down from the EU. As a result we have a common goal within the UK.
2. The resource/costs associated with drafting legislation and with associated consultation and cost benefit analysis is significant. In the past we have seen legislation introduced in England and Wales that is very similar to that in Scotland. Development of this has presumably required a duplication of effort and resource in each location. Resource efficiency would also be achieved when developing guidance information.
3. Many larger businesses, both in the waste management industry and in other sectors, operate UK wide. Compliance with differing legislation made to achieve objectives that are broadly the same in the various areas is an additional burden on them with implications (including financial) for their customers.
4. Differences in legislation amongst the UK areas create confusion. In many SMEs, and smaller HFE organisations, there is no significant in depth expertise and, where they exist, those with responsibility for (as an example) environmental legislative compliance carry out these duties as part of a multi-remit post. Waste legislation in particular can be extremely complex and the confusion that can arise between differing requirements North and South of the border is an added layer of difficulty. This is frequently exacerbated by information that appears in trade journals and other publications (including the so called 'specialist' publications that purport to provide a one stop easy access to understanding legislative requirements) and specialist training courses for businesses on waste issues. Such information, training and articles is generally based on the legislation as it applies to England and Wales, often with no, or little, reference to the differences in Scotland.
5. In the specific area of waste, waste reduction leans heavily on creating markets for re-use and on developing technology and infrastructure to support reuse/recovery/recycling. Whilst the proximity principle should always be applied where possible, the critical mass of Scotland alone is very small to economically support such changes, and without suitable



investment and development we may find a situation where any legislation introduced in isolation in Scotland brings very limited benefit. This argument is equally applicable to any attempt to introduce legislation for minimum recycled content when purchasing. This is addressed further below. Direct adoption of the legislation that is in force in England relating to a requirement for site waste management plans would be a positive step towards achieving zero waste and to legislative alignment.

In summary, a harmonised/aligned approach for the UK would bring efficiencies in preparing legislation, in enforcement and support and in compliance.

As an additional consideration, in city centre areas especially where space for public recycling facilities is harder to come by, the incorporation of recycling facilities (for the public as well as customers / staff) into the designs of larger housing and commercial developments could be encouraged through the proactive use of planning consents. This would have the advantage of encouraging additional facilities in more places, thus reducing the burden on organisations like those in the HFE sector that value open spaces with public access.

Should zero waste be tackled through waste or climate change legislation?

It is important to make the link between zero waste and climate change, such as the potential savings in carbon and methane. This can be of particularly benefit in achieving carbon reduction targets and also in securing funding such as the Climate Challenge Fund. However, whilst there is no debate about the link between reducing waste and climate change this link is not always transparent to the wider public and it is essential that the objectives of legislation are clearly seen and understood by all, in addition to being considered worthwhile and achievable by the public at large.

Embedding requirements for waste within climate change legislation is likely to cause confusion, dilute the waste strategy and add another layer of complexity to the already difficult area of waste legislation. Additionally, the calculation of carbon emissions from waste management in general is complicated and no commonly acceptable methodology yet exists making it hard for confusion to be reduced. Organisations such as WRAP should carry out research to provide standardised data regarding the calculation of carbon emissions from waste and subsequent standardised figures for calculating carbon saving for waste reduction, reuse and recycling activity.

Some of the issues highlighted by the consultation already have associated legislation (for example we have legislation on packaging). Arguably the existence of the landfill tax should act to encourage significant waste minimisation. The effectiveness of some of this legislation may be questionable; however this should not be addressed by introducing another layer of legislation, and all of the associated confusion this will cause, but by returning to existing legislation with a view to making changes to improve it and to bring it into line with current objectives and requirements. A more cohesive overarching waste strategy encompassing zero waste would be more user friendly and help to ensure compliance.

There are numerous aspects of the current waste legislation that could also benefit from a successful review/update. These would include the overall definition of waste, which effectively frustrates waste reduction (by designating everything as waste as soon as the current owner/user no longer requires it), the definitions of Clinical Waste and Household Waste and the requirement to consolidate the text of some waste legislation which has become almost impenetrable to the wider public.

One respondent was at odds with this view and believe that integration of legislation is not only desirable but essential given the inter-relationship of waste and climate change.



Issues relating to compliance

The issues for consultation listed below are without doubt worthy. However, it is necessary to carefully consider the likely level of compliance that could be achieved. Realistically, SEPA is unlikely to be able to commit significant resources to enforcement in these areas and there should be concern that those businesses that **do** comply may find themselves at a competitive disadvantage to those that do not. This is addressed further in the sections below.

One respondent believed that the proposed legislation would be valuable and would be welcomed by the Scottish college sector. It was their view that the proposed legislation would provide an additional driver for improvement.

DUTIES ON PUBLIC BODIES AND BUSINESSES TO PROVIDE RECYCLING FACILITIES

1. Do you consider that legislation should be made in this area?

There is existing legislation that requires waste to be 'pre-treated' (including segregation) and in line with this many, but not all, HFE organisations already have significant facilities and arrangements for recycling. Whilst good recycling has the potential to deliver reduced business costs and good public image, for many of the smaller HFE organisations the implementation could prove extremely challenging due to lack of expertise, staff resource, financial cost of introducing and effectively operating a system and space restrictions. In addition, the size of each waste stream may be small and this has a further negative impact on the practicalities. At some institutions segregation does not occur at source but after collection by a contractor.

Even within larger HFE organisations local conditions can be such that complying with specific arrangements could be a significant challenge. Success would be closely linked to the local availability of waste and recycling services and this also dictates what is practicable. There is, however, significant support for the expansion of reuse and recycling provided the legislation is flexible enough to accommodate local difficulties. A blanket requirement to provide recycling facilities may not produce the best recycling figures, a recycling or reduction in waste tonnage figure may be more appropriate.

One respondent replied 'yes' to this question.

2. If so, what form should that legislation take?

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. There should be no exemptions relating to size (turnover) of companies, however consideration will need to be given to accommodating such facilities in line with health and safety requirements and access.

If legislation is made to transpose these requirements, it would need to indicate whether provision should be made for an overall percentage of waste to be recycled – or identification should be made of the waste streams and associated percentages of those that require recycling. To make this clearer, if X produces 100 tonnes of waste, they could be asked to recycle 20% which would equate to 20 tonnes of any composition. If Y produces 100 tonnes of waste, they could be asked to recycle 20% of waste, comprised of 5% card, 5% paper and 10% plastic equating to 20 tonnes overall. Either way appropriate governmental and commercial support would be required to fulfil these requirements.

At present many public bodies and larger scale businesses already work in partnership with local authorities to provide recycling facilities for householders. It could be argued that those that allow these facilities on their land should be allowed to use them for their own waste too.



Enforcement will place a huge burden on whoever is assigned the responsibility of gaining evidence of conformance / non-conformance. However, without enforcement it is not possible to ensure that organisations are participating.

One respondent believed that the legislation should be enacted via Regulations as described in the consultation

PACKAGING

1. Do you consider that legislation should be made in this area?

As can be seen from the existing legislation relating to packaging, achieving packaging reduction cannot easily be achieved by imposing targets. The complexity, in light of changing circumstances, could become excessively cumbersome legislatively. New legislation does not necessarily need to be produced but the existing requirements amended to take into account the failings of the current approach, the detail would require extreme care so as to not create unnecessary complexities. The comments, above relating to UK harmonisation apply here.

Educating the consumer also has a significant role to play. By understanding what packaging is reasonably required to protect the goods consumers can influence the retailer and manufacturer through public opinion.

One respondent believed that, in addition to the tightening up of legislation, as suggested above, the legislation should be extended.

2. If so, what form should that legislation take?

Reduction of packaging could be achieved by requiring retailers to provide point of sale packaging disposal that could be utilised by the customer prior to leaving the store. In the case of the HFE sector and other businesses that receive delivery of goods, and also for larger goods that are delivered to businesses and directly to households, a requirement to remove packaging at the time of delivery or, in the case of large orders, at an agreed later stage would be beneficial.

The amended legislation should first and foremost put in place a mechanism whereby companies that provide packaged products take old packaging back with them upon delivering of new goods, for reuse or recycling at their own premises. This is particularly pertinent in areas where products are over-packaged, leaving the waste problem with the consumer as opposed to the producer / retailer. By adopting this approach, companies that provide such products would be forced to look at reusable long term alternatives. If retail outlets are required to provide recycling facilities for customers this could also be linked to a facility for customers to leave packaging at the outlet when they uplift goods.

Enforcement will again be an onerous task for the regulator, but one that is necessary to ensure implementation.

Additionally, addressing the incorporation of recyclable content into packaging would contribute to reducing packaging waste. Currently polystyrene type packaging is widely used with white goods, IT equipment and scientific supplies, whereas the recycling of polystyrene in the UK is very difficult. Encouraging the replacement of polystyrene, where possible, or a local recycle market are the only real ways to reduce this bulky waste stream. Either of these would need legislative drivers or significant enabling support nationally.



Informing consumers about the amount of packaging is educational, but may not influence the decision making process over product purchase. In the instance of products procured at a University (and probably also by businesses), this is led by a need basis as opposed to questioning whether a product is really required e.g. lab kit, computers, stationery etc. It is unlikely that a purchaser within the HFE sector would have any knowledge of the level or type of packaging for goods prior to delivery, other than for routine purchases such as stationary.

One respondent believed that additional legislation should be as proposed in the consultation but should also be accompanied by clear Codes of Practice.

SPECIFYING RECYCLATE

1. Do you consider that legislation should be made in this area?

Yes. Within the HFE sector there are currently requirements relating to construction, these operate as a condition of funding. Broadening the reach of this (e.g. to include furniture and packaging) and making it a legislative requirement could stimulate a market for recyclable waste materials, drive down the cost of products containing recycled content and increase the choice. A voluntary approach will only work within organisations that can appreciate the environmental return or in some instances the economic / PR benefit of doing so; or those that have the resources within their organisation to implement it.

2. If so, what form should that legislation take?

Again the legislation should be part of a UK wide integrated approach. It is essential that an appropriate level of choice and quality is protected by any legislative changes and the markets in Scotland alone are not sufficiently large to stimulate effective development of a good range of products. In addition, it is not always possible to produce a particular good with a recycled content and there needs to be recognition of the specialist nature of many goods purchased by the HFE sector. In many cases these are manufactured outwith the UK and often outwith the EU and may not be aligned with this type of legislation. Further, even those specialist goods manufactured in the UK may be unable to accommodate certain requirements. These comments apply equally to procurement for construction where the design process and the resulting built environment has relied on use of innovative products. Such innovation could be at risk by imposing legislative restrictions.

Manufacturers would require time to adapt to the requirements of legislation and so it would be essential to take a phased approach.

There are three basic issues that must be protected if legislation were introduced:

- *Availability/choice.* This should not be unduly restricted by the requirements of the legislation. In addition, in the case of some specialist goods purchased by the HFE sector there may be little or no choice in the market and so it would not be possible to select an option that complies.
- *Cost.* The cost of the goods should not be increased as a result of the requirement to comply
- *Quality.* It is essential that the inclusion of recycled content does not adversely affect the quality of the goods. In many HFE applications, for example the purchase of laboratory equipment, the quality and performance of the goods is a primary concern in a market where there may be few products that fit the specification.

One suitable approach may be to set overall targets for recycled content in procured goods. This could be either:

- A percentage of goods that must contain a specified recycled content or

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- An overall percentage figure for recycled content within the total goods procured during a set period.

If such targets were to be incrementally increased over a period of time this would stimulate demand for recycled content goods.

The legislation should ensure all procurement policies and tender processes have text stipulating the requirements, indicating the levels required and what areas are covered.

One respondent believed that legislation would create a level playing field.

Enforcement will again be an onerous task for the regulator.

WASTE PREVENTION PLANS

1. Do you consider that legislation should be made in this area?

Without legislation non-compliance is likely, apart from those organisations that can observe the economic benefit from implementation. The adoption of the English legislation requiring Site Waste Management Plans would be a positive step both in terms of waste reduction and alignment of requirements. However it is essential to consider the cost/benefit of legislation for waste prevention plans. These would only be effective if actually implemented. This type of legislation may encourage the production of Plans as a box ticking/compliance exercise but with no true commitment or benefit realised. Without adequate enforcement of the implementation of the Plan there is little point in enacting legislation, and enforcement would be extremely difficult. Many HFE organisations do not have a formal, overarching, waste plan but are taking positive steps to address the issue. This is more important than focussing on a plan that is not implemented.

If legislation is made in this area then, in order to facilitate ease of implementation, there should be a standardised approach utilising existing resources such as Waste Aware Scotland. The process could be facilitated by the production of customisable templates and resources covering main target areas.

One respondent had clear views that legislation should be made.

One respondent believed that waste prevention plans should be mandatory as a first stage of waste strategy, not secondary to recycling.

2. If so, what form should that legislation take?

If legislation were produced it should identify what the waste prevention plan should encompass and set realistic targets. It should also carefully consider how enforcement would be carried out and the implications of non-compliance.

It has been suggested that for waste prevention in the construction/built environment activities within the HFE sector a voluntary approach, rather than legislation, may be more suitable. Use of BREEAM by the sector is an example where this has been effective. It may be possible to reward good 'scores' that are achieved for a development by a benefit such as a cap on building rates or similar concessions.

One respondent believed that legislation should place a duty on public bodies and businesses to produce, implement and report on Waste Prevention Plans

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3. What public bodies and businesses should be covered?

Everyone. There should be no exceptions. However, SME's and under-resourced organisations may struggle with implementation unless support is provided e.g. Envirowise workshops, travelling consultants and template provision.

It should be noted that waste prevention plans will only work subject to policing and external verification. Writing one is different to actual implementation.

One respondent believed that it should apply to public bodies (for example as defined in the Nature Conservation (Scotland) Act) and to businesses producing waste quantities that exceeded a set threshold.

DEPOSIT AND RETURN

1. Do you consider that legislation should be made in this area?

Such schemes are proven to work, and encourage those not presently recycling to participate – raising overall awareness. They also help reduce the amount of raw materials required to make virgin products. However, it should be noted that many packaged products are imported; returning them to the actual producer / country of origin could be an issue for cost and adverse environmental impact. Additionally, different forms of packaging are more readily and economically reusable or recyclable than others. Legislation would ideally encourage a move towards reliance on those forms of packaging in preference.

The logistics and resource implications required if the various outlets (student cafeterias etc) in HFE sector were required to participate could be significant.

There was also a view that such legislation could supersede the legislation suggested in Proposal 1.

Again, to implement this in Scotland alone would be problematic.

2. If so, what form should that legislation take?

The legislation would need to indicate what items are covered by deposit and return, the value to the customer, the value to the producer and how it is to be administered. Ideally deposit and return could be applied to:

- Plastic bottles
- Food and drinks cans
- Glass bottles
- WEEE
- Batteries

A staged approach would be best as this would give time for the various packaging sectors and the recycling market to adapt.

It may not be appropriate for all types of outlets to participate

One respondent expressed reservations about legislation and suggested the use of encouragement to the industry and also guidance and Codes of Practice as an alternative. In addition, that respondent supported the introduction of legislation to restrict the production and

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distribution of bottled water and that a deposit and return system could facilitate this but that on balance this would be best pursued through a voluntary approach.

3. Your views on the practicalities of such schemes in Scotland?

Producers and Local Authorities, as well as large retailers and recreation facilities should work together to provide a network of reverse vending that is co-ordinated and administered on a UK basis. Such facilities could be provided through the network of recycling centres and points, supermarkets etc. Loyalty vouchers should be provided in return to the customer returning the items. Consideration would need to be given to health & safety and access issues with respect to storage of different material streams.

It was noted that the usefulness of such a scheme has an educational value.

One respondent believed that as reverse vending is still in its infancy funding should be provided for demonstration schemes to assess feasibility in the HFE sector. Until local support mechanisms are in place deposit and return should not be mandatory.

MANDATORY WASTE DATA RETURNS FROM BUSINESS

1. Do you consider that legislation should be made in this area?

When considering the HFE sector, many already participate within the Estates Management Statistics which are produced annually covering waste, water, energy and other sustainability issues. This could be adopted as legislative. The first step to good waste management is to understand the waste stream and key in this is knowing how much is produced. It would, therefore, be extremely beneficial to an organisation to quantify their waste.

This is probably one piece of legislation that could be effective at a Scottish level.

2. If so, what form should that legislation take?

The legislation would need to stipulate:

- who would be required to participate
- the information that is needed for submission
- when the submission is required
- information on a consistent approach to data collation by the submitting organisation
- what happens with the submitted data

A careful balance needs to be struck so as to encourage gathering of sufficient data whilst not making the task unduly onerous. In addition, resulting data could be misleading as it may not take into account local circumstances, including availability of local recycling contractors for specific materials. Use of the data for benchmarking or league table would need careful consideration in light of this.

Production of standardised templates would be useful in facilitating compliance.

One respondent believed that the legislation should take the form proposed in the consultation. Many colleges have resource restrictions that would impact on their ability to comply; as a result any requirements to make returns should be subsumed into, or aligned with existing sector or legislative reporting mechanisms or those associated with climate change legislation.

3. Do you have any views on the kind of businesses to be covered?

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All public bodies and businesses should be covered; perhaps submission content should be tailored to the nature of the business or the size of the business. There should be no exemptions. One respondent believed that the requirement should only be applicable to businesses that produced waste quantities in excess of a threshold (see also Waste Prevention Plans, above)

OTHER MEASURES TO ENCOURAGE WASTE PREVENTION, INCLUDING ACTION ON SINGLE-USE CARRIER BAGS

1. Do you consider that legislation should be made in this area?

Yes

2. If so, which areas should these powers cover?

- Shouldn't just encompass plastic carrier bags, but all forms of short-term use packaging. Legislation should support the development and sale of biodegradable/compostable packaging and bags where their use **is** required.
- Development of processes or legislation to reduce food waste could be an objective. This should encompass the reduction of waste production and also encourage and support the effective composting and 'reuse' of this resource.
- Standardised recycling symbols for all products

3. Are there are any other areas, not covered by this consultation, where legislation could be made to increase recycling and promote waste prevention?

Ensure that costs for recycling are affordable for educational establishments and charities to encourage their full participation, thereby gaining maximum educational benefit. There is an aspect of this that overlaps with the lack of clarity that currently exists over the charging by waste disposal authorities for disposal of household waste from educational establishments.

Government should undertake educational campaigns to inform the public about the ultimate fate/use of waste that is recycled and about the benefits gained from this (resources saved, CO₂ minimised etc)



Annex F - Respondent Information Form

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

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1. Are you responding: (please tick one box)

(a) as an individual to Q2a/b and then Q4

(b) **on behalf of a group/organisation X** go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address



Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3 The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes X

SHARING RESPONSES/FUTURE ENGAGEMENT

4 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes X

