

Consultation on the draft Zero Waste (Scotland) Regulations 2011
Written Submission by the Scottish Futures Trust

1. Introduction

The Scottish Futures Trust (SFT) is an independent company, established by but operating at arm's length from, Scottish Government with a responsibility to deliver value for money across all public infrastructure investment.

Our submission to the consultation on the draft Zero Waste (Scotland) Regulations 2011 (**"the Regulations"**) does not seek to comment on the objectives of policy and regulatory proposals *per se*, but focuses on the infrastructure delivery issues that the public sector will need to address so as to secure access to affordable and sustainable waste treatment infrastructure in order meet the objectives of the Zero Waste Plan (**"ZWP"**).

2. Response to Q 11

Scottish Government intends that the EfW restrictions will apply immediately to any new installation. What transitional period should be allowed for existing EfW installations to comply with the regulations?

This issue does not only relate to EfW facilities but to all waste treatment facilities that currently receive mixed waste for treatment. We consider that each facility should be treated on a case by case basis.

For some facilities there may be a strong case to allow such facilities to continue to receive a waste of a composition that would allow them to continue to operate in their current form until the earlier of the natural expiry of the existing service contract or the point in time at which the facility is due for a major plant and equipment overhaul. For some facilities the additional costs (including potential funder/contractor breakage costs or the cost of varying an existing service contract) and/or loss of revenue from the sale of electricity and/or heat may outweigh the environmental benefits of either early termination of existing service contracts or a major retrofit to an existing facility.

However, for some existing local authority treatment contracts (working within public procurement regulations) measures should be explored to source tonnages of waste for treatment from other sources so as to release part of the local authority waste stream for recycling activities whilst still honouring contractual obligations with regard to minimum levels of tonnage for treatment.

3. Response to Q 12

Do consultees consider that the lead-in times for the landfill bans are reasonable?

The introduction of the carbon metric and the Regulations will necessitate a step change in the way in which waste is managed. It is important that local authorities take a long-term view and a whole system approach to developing and implementing new waste services.

On the assumption that the Regulations are enacted as drafted in October 2011, it would not be unreasonable for local authorities to allow say 18 months to develop, consult on and adopt new long-term integrated waste management strategies. This would leave two years to procure access to food waste treatment facilities and four years to procure access to residual waste treatment facilities. Where there are local facilities in operation (or at least with planning permission) and with sufficient capacity and an ability to receive the composition of waste that requires treatment, the proposed 2015 and 2017 landfill bans should be deliverable. In some areas of Scotland this may not be the case. In such circumstances a four to five year lead time to procure, construct and commission new food waste treatment facilities and a six to seven year lead time to procure, construct and commission new residual waste treatment facilities post completion of integrated waste management plans should be considered.

Key items on the critical path will be planning, permitting and the accreditation process for compost and digestate. In particular, careful consideration should be given as to how the PAS 100/110 accreditation process for new treatment facilities fits into the timetable for the 2015 recycling targets.

4. Response to Q. 14

Do consultees have any other comments?

Regardless of what policy and regulatory position is enacted and how local authorities choose to provide waste services in the future; costs of providing such services will increase significantly in the short term. With forecast real term cost increases to current local authority waste collection, treatment and disposal activities ranging between 40% and 70%, measures need to be taken to move away from the historic short-term, stop/start and largely fragmented approach of delivering waste services in Scotland to a more strategic, managed and coordinated approach.

The issues discussed below are considered critical to the successful delivery of the objectives of the ZWP.

4.1. Policy & Regulatory Stability

Government policy and regulatory measures to support the implementation of policy have been in development for several years now. Changes in policy have, in part, led to a number of abortive waste initiatives which have cost both the public and private sector many millions of pounds. The Zero Waste Plan requires long-term strategies to be developed and careful consideration of how best to implement new works and services. It is therefore essential that there is a period of stability in waste policy and regulation to avoid further abortive costs.

In addition, the Regulations allow exemptions from certain provisions, in particular, the proposed requirement to collect and carry food waste separately from all other wastes. It is essential that the basis on which local authorities can apply for such exemptions (to whom, by when and how) as well as the criteria against which such applications are assessed is made clear and applied in a consistent and objective manner. This will help militate against the risk of abortive costs and solutions being implemented that do not realise policy objectives.

4.2. Planning for the Future

Whilst some local authorities have developed local waste strategies, many of these are now out of date. Historically the approach has been for local authorities to focus on short-term objectives within their own administrative areas.

To meet the goals of the ZWP, it will be essential for local authorities carefully to plan and prioritise future services and infrastructure investment. This will require a long-term view to be taken to allow the integration of new collection and treatment services to be phased in and for opportunities to generate renewable heat and power to be realised in a managed and affordable manner.

It is therefore essential that sufficient time is made available for long-term integrated waste plans to be developed on a local/regional basis so that local authorities have a long-term view as to the likely services required and the impact on future budgets, and that a concerted effort is made to realise regional solutions that meet the complementary policy objectives with regard to waste, renewables and carbon.

Given the lead time for delivering new infrastructure such integrated waste management strategies should have a planning horizon of at least ten years.

4.3. Making Best Use of Resources

In recent years local authorities have sought to develop solutions largely to meet their own needs. There has been much discussion between local authorities in Scotland with regard to collaborative working in the waste sector, but apart from a few exceptions, there has been limited progress in this area. This has led to considerable duplication of effort, an inconsistent approach to the market, a failure to exploit potential efficiencies and economies of scale and treatment solutions procured not being available to local authorities other than the procuring authority.

Given the current financial climate and limited availability of the necessary skills and resources in both the public and private sector, strong leadership is required to develop waste strategies and infrastructure plans that identify the optimum waste collection and treatment solutions for areas that have synergy from an operational perspective rather than current local authority boundaries.

This concept of shared asset development and management is one of the aspects that underpins the future success of other public sector initiatives such as the hub programme for community based infrastructure. A similar approach in the waste sector would not only provide a more efficient platform to deliver new works and services but would also have the potential to unlock considerable efficiencies in other areas such as fleet management and depot rationalisation. Maximising such efficiencies will be essential to release funds to pay for new collection and treatment services.

In driving forward such joint working local authorities should consider how best to bring together the expertise and experience that exists in the public sector to mobilise centres of expertise that can deliver solutions on behalf of many authorities, and potentially provide a

contract management function to ensure ongoing value for money in the delivery of future services.

Finally, on the issue of making best use of existing resources, cognisance should be taken of the fact that a number of existing treatment facilities exist, and measures should be taken to ensure that best use of existing infrastructure is made.

4.4. Governance and Assurance

It is rare that local authority waste plans, strategies, procurement initiatives and governance arrangements are subject to independent scrutiny through a proactive programme/ project assurance function. This has, on occasions, led to delays and cost increases in the procurement of waste initiatives as well as local strategies that are not fully aligned to national objectives.

Given the likely need for greater joint working and collaboration across the public sector, careful consideration should be given to joint governance and assurance arrangements to ensure commonality of objectives, clearly defined accountability and responsibility and timely decision making. SFT's view is that greater collaboration between public bodies is necessary to deliver effective asset planning, delivery and management of future waste services.

However, joint working and collaboration will only go so far and there are situations in which it will not be enough. There is a danger of increased collaboration being used as a substitute for greater reform where more radical thinking around de-cluttering and reallocation of responsibilities would be possible, albeit at some short-term cost. By way of example more radical delivery and funding models could be appropriate for the waste sector in Scotland. Models that could be built upon from other parts of the UK and other sectors include:

- establishing a regional or national waste and resource management body(ies) that operate in a similar manner to the regional waste bodies in Northern Ireland;
- establishing a national or regional waste/ resource utility that is funded and regulated in a similar manner to other utilities such as in the water, power and telecoms sectors; or
- establishing regional “franchises” similar to the model adopted for trunk road maintenance in Scotland.

4.5. Market Management

To date it has largely been left to the private sector to identify what waste treatment facilities are provided, the technology to be adopted and where facilities are located. Currently the total treatment capacity being proposed by the private sector is significantly greater than the capacity required, with many of these developments proposed for west central Scotland. This presents a number of risks. It is likely that for many local authorities the treatment solutions will not be available where or when they want it, nor necessarily at a price they can afford given the additional haulage costs. In addition, this market led approach to treatment capacity could lead to the “tail wagging the dog” – namely collection strategies being driven by the treatment technology available, rather than the other way round.

Additionally, the introduction of an absolute landfill ban of certain materials on defined dates means there is likely to be a “rush” to secure access to treatment capacity as we approach these dates. Experience from the continent suggests that in such circumstances those contractors who are able to secure “first mover advantage” will have a dominant and monopolistic market position over certain areas. In a market where price is not subject to any form of regulation this could lead to affordability problems for local authorities. In the longer term this problem could be exacerbated if, as past experience has shown, the market consolidates through mergers and acquisitions.

Measures should therefore be taken by local authorities to ensure that they do not allow monopolistic supply with regard to waste treatment to occur. This could be achieved in certain areas by local authorities aligning their waste strategies, aggregating comparable waste streams and offering anchor contracts of a suitable tonnage to the market via long-term contractual partnerships. Such an approach would allow pure “merchant” facilities to be developed alongside authority-led facilities and help create a more mixed economy of treatment facilities across Scotland.

4.6. Pipeline Management and Investment Prioritisation

To allow the waste industry, the construction sector, technology providers and funders to mobilise in the most cost effective manner, measures should be put in place to afford the market with better visibility of the waste infrastructure investment pipeline.

There is also merit in considering a phased implementation of key treatment facilities. By establishing a phased programme for the delivery of regional food waste and/or residual waste treatment facilities, Scotland would be able to mitigate the risk of a bottleneck in both public and private sector capacity, reduce the risk of construction price inflation and create an environment that encourages the industry to mobilise in Scotland for the long term.

5. Conclusions

The above sections represent a general and wide ranging response to some of the issues that will need to be addressed to deliver the objectives of the ZWP in an affordable and sustainable manner. We have highlighted:

- the need to ensure that a stable policy and regulatory environment persists to allow consideration of long-term strategies for future waste management that complement renewable energy and carbon reduction policy objectives;
- that a longer term view and a collaborative approach need to be taken by local authorities, and
- that measures should be taken to avoid a monopolistic supply situation arising through the development of a coordinated programme of regional food and residual waste treatment facilities.

We would be happy to expand on any of these specific approaches if the Scottish Government would find this useful in finalising its deliberations or in structuring its report on the findings from the consultation on the draft Zero Waste (Scotland) Regulations 2011.