



Legal Update

The Circular Economy Package – What will it mean for Local Authority waste services?

Summary

The climate change negotiations in Paris are stealing all the headlines at the moment. As a result the European Commission's launch of the new Circular Economy Package on 2 December has flown slightly under the radar.

For those in the waste and resources sector it is an extremely significant development that will guide the growth of waste and resources legislation and related controls for the foreseeable future.

The expert teams at WYG, Grant Thornton and Weightmans have come together to launch an initiative that will break the new Package down and focus on the likely impacts for local authorities and the services that they provide. Collectively we will give you a unique insight into the financial, practical and legal aspects of the Package.

This note and the webinar planned for 19 January 2016 provide an introduction to the headlines of the Package. Future blogs and workshops will look in more detail at specific aspects of the Package as more information is released by the European Commission.

Financial – Grant Thornton

The financial implications of the proposed Package are likely to place greater financial burden on local authorities if there is a requirement for greater source segregation where this is not already undertaken.

Whilst there is an argument that greater source segregation will help reduce contamination and generally increase the quality of recyclables collected, which in theory should increase the value of those materials, it does not alter the fact that these are commodities, with all the uncertainties of operating in commodity markets. The revenue generated will likely remain unpredictable, certainly for the foreseeable future, and the local authority will be exposed to this or be prepared to accept very low guaranteed income from the private sector. Whilst the EU say they recognise the essential role of the private sector in creating demand for secondary products, there are going to be no financial stimuli such as tax incentives for use of these materials, and hence no certainty of reasonable levels of income to offset those extra costs for local authorities.

Therefore, when you add the potential requirements for separately collected food waste the burden will potentially become greater. The extent of this will depend on what the options and cost of treatment or onward sale of materials are. This in turn will be impacted by the nature of existing arrangements and who does them, any existing contractual obligations (such as CV on thermal processing contracts which could be impacted by removing plastics from the residual stream). The analysis really is going to have to be a comprehensive whole system cost assessment.

Albeit, any outcomes of such analysis may well be trumped by the legal obligations that come with the initiative and in particular any financial penalties for not meeting the requirements.





Technical – WYG

The proposal to amend the Waste Framework Directive 2008/98/EC (rWFD) responds to the legal obligation to review the waste management targets in that Directive. This Directive and other associated EU waste management Directives have been seen as successful drivers in improving waste management across the EU, but discrepancies still exist with certain Member states. Implementation of the Package through amendment of these Directives is seen to be building on the legislative approach taken so far and is designed to drive waste management up the waste hierarchy and thereby achieve improved resource efficiency across Europe.

Two key areas that could potentially ‘pull’ against each other in respect of impacts on Local Authorities as the Package is introduced through amendments to existing rWFD concern the following:

- The proposal to increase recycling target for municipal waste from the current 50% figure by 2020 to 65% by 2030 (interim target is 60% by 2025), should this be translated back into statutory recycling targets for councils, could only be achieved by most councils through the introduction of collection of food waste from households for treatment by Anaerobic Digestion or IVC; and
- Under replacement of Article 22, ‘Member states shall ensure the separate collection of bio-waste where technically, environmentally and economically practicable (TEEP)...’ and the definition of bio-waste includes food and kitchen waste from households. Hence, it would appear that food waste is to become one of the target materials for separate collection by waste collectors subject to TEEP Assessment. The existing Waste Regulations (England and Wales) 2011 (amended 2012) allow for co-mingled collection of the existing four dry recycle target materials (paper; metal; plastics; and glass) provided separate collection can be shown NOT to be TEEP. Assuming that the same test might be applied to the collection of bio-waste in given situations, and for a particular council, it may be possible to show that separate collection of food waste is not TEEP. Also worthy of note, is that a majority of Waste Collection Authorities already collect garden waste, a material defined as bio-waste under the amended Directive, with an increasing trend to charge for what is currently a discretionary service. However, a decision not to collect food waste, should statutory recycling targets be re-introduced for local authorities, would mean that the council concerned is highly unlikely to reach its recycling targets if, for example, these are set at 60 to 65%. Even if, as with previous statutory recycling targets, these vary by authority, such a measure is likely to have significant financial impacts for many local authorities.

Other areas of impact, for some Local Authorities that, so far, do not have solutions in place or plans for residual waste recovery, include the introduction of a gradual limitation on landfilling municipal waste to 10% by 2030. And those councils that have or plan to put Energy from Waste solutions in place to treat their residual waste may face the possible implementation of incineration charges. ‘Pay as you throw’ schemes are also muted in the proposed amended Directive, as an example of financial incentives aimed at achieving waste prevention and recycling objectives. Local Authorities will have concerns that such an approach could disproportionately affect low income households and may lead to an increase in fly tipping.

Legal – Weightmans LLP

The Commissions announcement identified a number of hard measures concerning amendments to 6 specific waste related Directives. The majority of the changes will introduce revised targets (such as those referred to in the Technical section above). They will also introduce other detailed measures, such as greater clarity around terms such as “by-products”. It is likely these changes will come forward in 2016 as part of the EU work programme. These changes will directly affect the services being offered by local authorities.

The Commission announcement also identified a number of softer measures many of which can be found in the Action Plan. The lack of detail around these softer measures which relate mostly to non-waste considerations has caused a ripple of concern amongst a number of commentators. That is primarily because the only way the circular economy will succeed is if the Commission simultaneously addresses all parts of the circle e.g. raw material use, product design, consumer choices and also reuse, recovery and secondary markets for recycled products. The use of an action plan in relation to these other areas, rather than firm legislative proposals, is indicative of their complexity.



The Action Plan introduces a number of 'voluntary' measures to address some of these more complex issues. This should only be seen as a short to medium term solution. In the long term hard measures will be required to tackle these more complex issues.

The Package advocates the further use of financial incentives to properly implement the waste hierarchy. That is not an approach favoured by the UK Government, but is it something that local authorities will need to do in light of the increasing budget pressures and increasing demands to offer ever more effective waste and resources solutions? The answer has to be yes.

The development of markets for recycled materials and the promotion of 'pull or demand side' measures is of vital importance. Disappointingly there is not much detail around this in the Package. This ties into recent reports of the need for local authorities and their contractors to share the risk associated with the markets for, and price of, recyclable materials. In the absence of any specific demand side measures in the Package, the need for a new approach to the sharing of risk is even more urgent. No doubt we will see a move to develop a new approach in the contracts and models used by local authorities when procuring waste services.

What Next?

It is important to note that the announcement of the Package is just the start of the circular economy journey which will last for a number of years.

Join us for our joint webinar on 19 January to find out more about what the Package will mean for your authority and the services you provide. [Register for the webinar on 19 January here.](#)

For further information or to discuss any of the issues in this update, please contact:

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**Weightmans LLP
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Simon Colvin, Partner – Weightmans LLP

Simon heads the firm's National Environment Team. Simon has extensive experience in the waste and local government sector having acted for many local authorities in the procurement of waste and resources services.

Simon also acts for a number of leading private sector waste and resource companies advising on environmental compliance and developments in the regulation of waste activities.

Simon is a co-opted member of the NW CIWM Council and speaks and publishes regularly on environmental issues.

Simon helps to convene the NW UK Environmental Lawyers Association group, works closely with IEMA and writes regularly for the Environmentalist and CIWM Journal.

According to Chambers, sources laud Simon's dedication to the sector, noting his knowledge even in esoteric areas of the field. Sources say: "Not only does he have the attention to detail, but he has a commercial view as well."

Weightmans Waste Group

Weightmans has a market leading waste team who specialise in the provision of advice and services to both the public and private sector. The team have acted for many authorities advising on the application of new legislation to their activities alongside the procurement of waste and resources solutions including EfW, AD, IVC and a host of other technologies. In addition the team act for a number of the leading private sector operators and a number of mid tier operators advising on their day to day activities and their commercial relationships in relation to the services they provide.

Mike Read, Director, Energy & Environment – Grant Thornton

Mike is Head of Energy & Environment within Grant Thornton's Infrastructure Advisory team. Mike also heads up Grant Thornton's waste sector group and the author of the firm's annual waste sector review. Mike has been a chartered accountant for over 20 years and has more than 15 years experience in public private partnership and other fundraising specialising in waste and energy contracts in UK, Middle East and North Africa (MENA), and Eastern Europe. Mike has worked on over twenty PFI /PPP projects and related transactions in the waste sector. In recent years he has focused on more innovative contracting and funding structures, and advising contractors and public authorities on more efficient delivery of services and effective use of assets. Mike was on the Finance and Regulation working group for the Defra/DECC Anaerobic Digestion Strategy development. Mike has a regular column in CIWM On-line

Grant Thornton in the waste sector

Grant Thornton UK LLP ("Grant Thornton") is a leading financial and business advisor to the public sector and corporate businesses and is the UK member firm of Grant Thornton International Ltd.

Through our Energy & Environment team we are very active in the waste sector, and where the waste and energy sectors combine. We have a particularly strong focus on the municipal sector, and have worked on more than 40 municipal waste treatment project procurements in the UK, either as advisors to the public or the private sector. In addition to advising on commercial and financial advisory in relation to municipal projects, we offer the following services more broadly to waste sector clients: mergers and acquisitions, restructuring, debt and equity fundraising, recovery and reorganization, accounting, tax and forensic investigations

Dr. Jeff Evans, Associate – WYG

Jeff is an Associate at WYG and works in a team that is solely dedicated to supporting Local Authorities in respect of Waste Management. In his early career, he worked as a Water Treatment Consultant for industrial and commercial sector clients before embarking research for the University of Leeds in the area of waste management and residual waste thermal treatment, which led to Jeff attaining a PhD in Environmental Engineering. He is also a Chartered Waste Manager. Jeff has worked as an Officer at East Riding of Yorkshire Council and at Barnsley Metropolitan Borough Council, with his last local government role being the Waste Partnership Manager at North Yorkshire County Council with responsibility for coordinating the delivery of the joint Municipal Waste Management Strategy for nine local authority partners. In all, Jeff's career in waste management now spans over 15 years and he has delivered numerous projects in this area and has a long track record of successfully supporting local authorities, particularly, in the areas of waste collection design; waste procurement; compliance; and waste strategy.

WYG Waste Team

WYG is a leading programme, project management and technical consultancy employing over 1,500 people and operating from more than 50 locations across the UK, Europe, Africa, Asia and the Middle East. We are designers, project managers, engineers, surveyors, town planners, environmental specialists and business service professionals. Our waste team covers three principal waste management areas: Planning & Permitting; Local Authorities; and Engineering and provides services for both public and private sector clients. The team also benefits from our wide range of in-house capabilities to enable the delivery of comprehensive solutions for our clients.