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Consultation Questions

1. Is there a need for a proposed Measure to deliver the stated objectives of making provision to reduce the amount of waste and litter in Wales and contributing to the development of more effective waste management arrangements in Wales?

- The measure could be an important tool to assist the long-term aim of the national waste strategy for Wales to become a zero waste country by 2050. The measure can help move waste up the waste hierarchy away from disposal and towards waste reduction and reuse, although the focus is on recycling which is only mid-way up the hierarchy. The Welsh Government should consider doing more to promote waste reduction rather than just segregation and recycling.
- The Welsh Government should consider using the measure to allow local authorities collaborating within regional procurement hubs to pool Landfill Allowance Scheme (LAS) and recycling targets. We suggest this as a temporary provision until regional waste treatment facilities are operational. This could demonstrate that the Welsh Government is prepared to help authorities during the period where waste treatment capacity is being created in Wales, extending collaborative efforts to allow those authorities better placed to support those nearer to incurring financial penalties for LAS contravention. This provision recognises the different circumstances currently applicable to each local authority and their varying need to progress collaboration quickly. It would ease current progress and have no impact on the long-term strategic aim for each local authority to take their share of responsibility for delivering national waste strategy.

The Welsh Government provides about 80 per cent of waste funding, either through the Sustainable Waste Management Grant or through RSG. The measure gives the Welsh Government strong legislative powers and they may be able to orchestrate operational issues through funding and through legislation.

- However, success relies on citizens' willingness to participate. This major factor lies outside of the control of the Welsh Government or local authorities. Gains here are made by communicating and influencing behavioural changes, not by exercising powers.
- The Welsh Government may also wish to consider that with such potent regulatory and funding controls, the influence over local authorities gives little scope for local decision-making. Does the Welsh Government wish this or would it be more appropriate, as many authorities are suggesting, for the Welsh Government to be less prescriptive and to judge performance more by the outcomes achieved not methods used?

The measure is widely drafted giving scope for the Welsh Government to introduce many new powers. This may be a consequence of frustration, and that persuasion is not getting the results expected (or at least not by the methods expected).

- This is a concern and somewhat confusing as the Welsh Government has not communicated this problem. In fact, media reports of the progress of waste strategy indicate good waste diversion and recycling performance across Wales with many local authorities ahead of the game. It is therefore difficult to identify the need to resort to coercion and penalties.

The power to make subordinate legislation under this measure is potentially a useful regulatory tool for the Welsh Government.

- The consultation is unclear about the scope and limitations of this power. We are however aware from our work with local authorities in Wales, that there are different views held about aspects of the emerging national waste strategy. One particular example is the relative merits of comingled kerbside collection of recyclable wastes against the Welsh Government's preferred method of collection with wastes sorted at the kerbside. If the measure powers, or subsidiary powers are used to force compliance with the Welsh Government's preferred option then this must be supported with clear and unequivocal evidence that show, on balance, that kerbside sorting is best. At present, this evidence does not seem to be conclusive and some of the local authorities performing best at recycling are operating co-mingled collections.
- The Welsh Government needs local authorities to support in full the national waste strategy, and at present, this has not happened. There needs to be better ownership of the strategy and the targets contained before the powers in the measure are used to enforce compliance.

The Welsh Government also needs to ensure that citizens receive a recycling service that is as easy as possible to use and that works with modern lifestyles. The Welsh Government commissioned 'Scoping New Municipal Waste Targets for Wales, in 2007. This report clearly expressed the importance of high capture rates, saying *'higher recycling rates in the revised Waste Strategy is a sensible approach, and one which, if it is supported by policy changes which are likely to be conducive to high capture rates for a wide range of materials, will deliver savings relative to lower cost recycling systems'*. What is missing is evidence that the Welsh Government's preferred method of kerbside sorting is 'conducive to high capture rates for a wide range of materials' or that this method is cost effective.

- The Welsh Government needs to clearly prove that kerbside sorting is the best option for all local authorities, whether rural, valley or urban, before considering use of the measure to enforce uptake of this method.

- Similarly, the measure gives the Welsh Government power to force collaboration between local authorities. This approach is unlikely to enhance the quality and harmony of the organisations that will manage waste disposal over the next few decades. The Welsh Government should consider with caution use of powers under the waste measure for this purpose.

3. Are the sections of the proposed Measure appropriate in terms of achieving the stated objectives?

In considering this question, consultees may wish to consider the nature of the provisions in the proposed Measure that:

☐ recycling, preparation for re-use and composting targets (section 3);

- For some time, local authorities have considered that the commercial sector was not as regulated. This has a bearing on local authority waste services and in particular, trade refuse services where local authorities compete directly with the private sector for business but with very different levels of regulation.

☐ regulations about penalties (section 4);

- It is not clear if this new penalty is additional to the financial penalty for failure to meet targets under the Landfill Allowances Scheme.
- The measure proposes that fines are imposed for failure to meet statutory recycling targets. However, doubt has existed over whether the threat of passing on LAS fines to authorities would be imposed. If fines are based on target breaches only, regardless of the attempts of the authorities to improve performance, then the Welsh Government is making it more difficult for performance to improve in the future by cutting off the resources that are required to improve. The Welsh Government will need to be clear whether it is prepared to see this tough approach through – and how will it manage when authorities get into problems. Current performance is good with targets met so it is difficult to justify additional penalties applied to a system that seems already to be working.

☒ monitoring and auditing compliance with targets (section 5);

Using the measure to manage performance

Any targets made under the proposed Waste (Wales) Measure 2010 will be statutory targets under the national waste strategy *Towards Zero Waste* and the Local Government (Wales) Measure 2009. The Welsh Government has power to establish statutory performance indicators and performance standards. In addition, Welsh Ministers may make an Order to specify performance standards in respect of the performance indicators set by them. Performance standards would be the mechanism by which the statutory waste targets under the proposed Waste (Wales) Measure 2010 would be established under the Local Government (Wales) Measure 2009. This dual approach in relation to regulatory frameworks will provide flexibility in dealing with issues of potential or actual non-compliance with statutory waste targets.

The Welsh Government intends to establish the first statutory target for recycling, preparing for re-use and composting waste, of 52 per cent by 2012/13, in a Statutory Instrument in April 2010 using its powers under Section 8 of the Local Government (Wales) Measure 2009.

Failure to meet new recycling targets or performance indicators may result in financial penalties.

- How will the Welsh Government demonstrate that it is the local authorities' failings rather than the limitations of the methods they have imposed, or low voluntary participation, that is the cause of poor performance? This is of importance for Wales Audit Office, as we undertake the annual performance assessment within the Local Government Measure.
- We suggest that there should be a stronger means of intervention to improve performance and a much more informed assessment of the attempts made by each authority to improve performance before fines are used.
- Local authorities tell us that targets and performance indicators can be helpful for service planning. If there are statutory targets to meet, local authorities will be much more likely to concentrate efforts to meet these targets. This also means that local authorities are more likely to maintain funding, a particularly difficult issue for all authorities in the current climate where large efficiency savings are required across a broad range of service. However, with a high proportion of fixed service costs and dependency on the Welsh Government's Sustainable Waste Management Grant, there may only be a small proportion of overall budget from which to take the efficiencies required. This can mean a direct impact on service capacity that is an important component of delivering improved performance. Waste management skills in Wales are scarce.

- Our work with local authorities indicates that there is still doubt about the achievability of some of the proposed waste targets. In particular, some local authorities have recently analysed the composition of their municipal waste and this suggests that there is insufficient food waste available to meet the new targets. It would be unfair make judgements about performance where, for some, the targets set may be unrealistic and unachievable.

Local authority performance will also be monitored by the reporting of performance indicators via the Local Government Data Unit, which are signed off by the Auditor General for Wales. Where any local authority fails to achieve a target, it will be a matter for the Welsh Ministers to determine whether the penalty is applied.

(c) make regulations to prohibit the deposit of waste in a landfill (sections 9-11), including:

Bans or restrictions on particular kinds of waste as one of a number of policy levers may help Wales to meet the ambitious targets for recycling, preparation for reuse and composting set out in national waste strategy and the measure. Key materials considered for restriction include food, green, paper and card, textiles, wood, glass, metals, plastics, waste electrical and electronic equipment (WEEE) and biodegradable waste.

- The Welsh Government should make a clear statement of policy intent and for the necessary establishment of waste treatment infrastructure before landfill bans are enforced. This needs time to set up infrastructure and to improve awareness. If preparations are not in place before the measure is used for this purpose, fly tipping and environmental pollution could result.

5. What are the financial implications of the proposed Measure for organisations, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the proposed Measure.

- As with the predecessor waste strategy, the new waste strategy should provide significant opportunities to save money as well as creating high quality jobs in the environmental industry sector. It was unclear whether the previous strategy achieved this objective and there should be closer monitoring of impact of the new strategy.

6. Are there any other comments you wish to make about specific sections of the proposed Measure?

Strategic issue need better clarity if local authorities are to own the targets within the measure.

The Welsh Government needs to give more clarity to waste strategy. National waste strategy is in review and consultation over the past few years has raised many issues concerning the level and achievability of targets and the operational methods that the Welsh Government will support.

- Local authorities tell us that they have had many mixed messages along the way from the Welsh Government. Several local authorities, keen to take the initiative and improve performance, have embarked on operational methods or engaged in procurement only to abort this process when national strategy changed direction. Examples of this are the Welsh Government's change in support away from Mechanical Biological Treatment and In-Vessel Composting. Similarly, in an attempt to set up operational systems to meet the new recycling targets now included within the measure, several authorities have changed their kerbside sort recycling to a co-mingled collection. This is because their trials showed better performance, cost efficiency and customer preference. The Welsh Government does not now promote co-mingled collection of recyclable wastes and could use the measure to enforce change to the kerbside-sort collection method. This is likely to have a detrimental effect on the performance of the local authorities affected, cause upheaval and increase costs and could confuse participating residents. The Welsh Government needs to weigh up carefully the use of the measure for this purpose.
- The Welsh Government should reinforce the new waste strategy with evidence that clearly shows the reasons for their preference for certain waste handling and treatment options. This would help to avoid confusion, improve the communication of strategic aims such as sustainability, and help local authorities meet the ambitious targets in the new strategy with efficiency.