

Proposal for a Recycling Measure

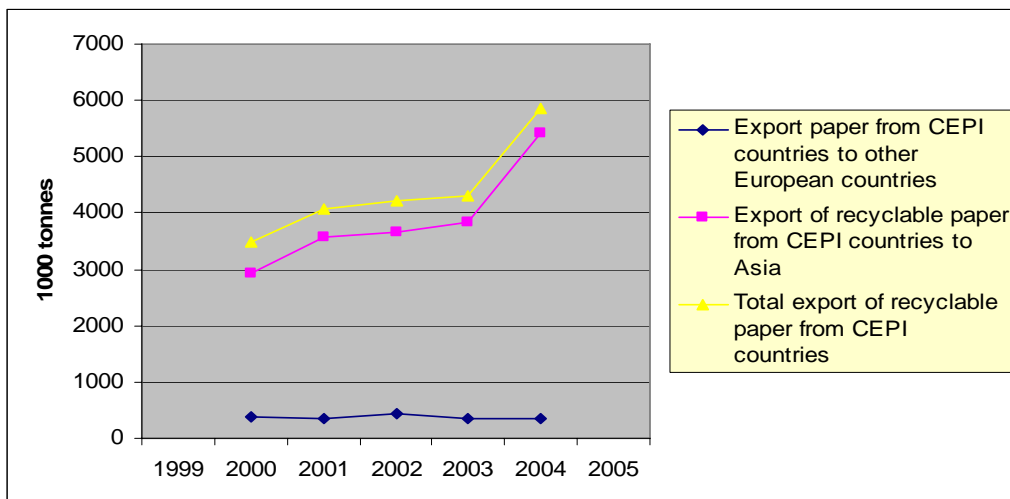
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1. Background information

Waste is a resource that is traded throughout the European Union and beyond. Transboundary shipment of waste has increased substantially during the last decade¹: 15 per cent of all 'hazardous and problematic' waste from EU countries was shipped across boundaries in 2003², with 92 per cent ending up in other EU countries, 5 per cent in other OECD countries, and 3 per cent in non-OECD countries³. The quantity of waste shipped over long distances is also increasing⁴.

In the first nine months of 2007, 45 per cent of the waste paper exported from the EU-27 (by value) was exported to China⁵. About half of the EU export of waste plastics is shipped to Hong Kong and China⁶. A graphical representation of the increasing export of waste paper to Asia is shown in Figure 1.



CEPI= Confederation of European Paper Industries.

Figure 1. Export of waste paper and the importance of the Asian market. Source: ETC

¹ European Topic Centre on Resource and Waste Management, *Transboundary shipments of waste in the EU: Developments 1995-2005 and possible drivers*, p. 7,

http://eea.eionet.europa.eu/Public/irc/eionet-circle/etc_waste/library?l=/working_papers/shipments290208pdf/ EN 1.0 &a=d

² *ibid*

³ *ibid*, p. 8

⁴ *ibid*, p. 84

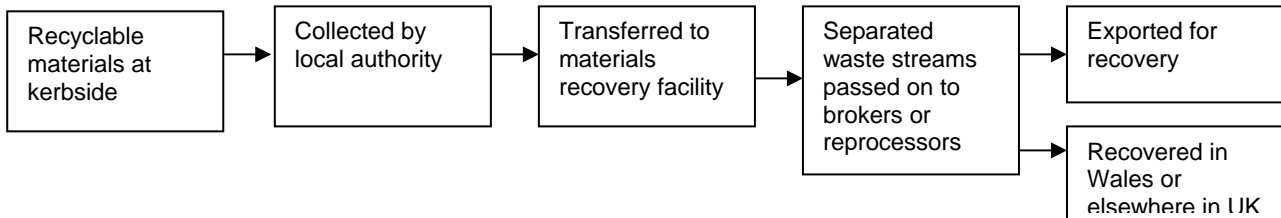
⁵ Eurostat, *External and intra-European Union trade: Monthly statistics – Issue Number 1/2008*, p. 110,

http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-AR-08-001/EN/KS-AR-08-001-EN.PDF

⁶ European Topic Centre on Resource and Waste Management, *Transboundary shipments of waste in the EU: Developments 1995-2005 and possible drivers*, p. 45,

http://eea.eionet.europa.eu/Public/irc/eionet-circle/etc_waste/library?l=/working_papers/shipments290208pdf/ EN 1.0 &a=d

The diagram below represents the typical movement of waste from the consumer to the final destination. The Duty of Care is denoted below each stage in the process



*Householder*⁷ *Local authority* *Recovery facility* *Broker/reprocessor* *Dispatcher*

In the last few years, media have described cases of waste being shipped to developing countries, where it causes health and environmental problems⁸. However, because of the difficulties involved in making useful analyses of aggregate data, and in particular, difficulties around "quantifying the environmental and economic consequences", the European Topic Centre on Resource and Waste Management (ETC) decided not to progress with an evaluation of the environmental and economic impacts from transboundary shipments of waste⁹.

The ETC notes that reported annual illegal shipments of waste are equivalent to about 0.2 per cent of notified waste (by weight), but considers reported cases to constitute a minor part of illegal shipments, and assumes that illegal shipments are both 'considerable'¹⁰, and part of an increasing trend¹¹. One third of reported cases were related to non-hazardous waste, mainly to non-OECD countries¹². Much of the amber-listed waste classified as illegal had been incorrectly classified as green-listed waste¹³. In 2003, the final recovery treatment of 10 per cent of the total notifiable waste exported could not be determined to a precise degree¹⁴.

The relatively high labour costs of treatment or disposal within the EU is seen as being a strong driver for illegal shipments of waste¹⁵. However, the ETC also notes¹⁶:

A case of illegal transport, where 1,600 tonnes of mixed household waste was intercepted on its way from England to China indicates that the privatisation of the waste management sector might be a driver for illegal shipment of waste [VROM, 2006b]. The waste intermediaries are paid to handle the waste, but when the cost of waste disposal is increasing in England, the intermediaries are tempted to ship the waste to Asian countries, where they can get a better price/lower cost for the waste.

⁷ Duty described under *The Waste (Household Waste Duty of Care) (Wales) Regulations 2006*, SI 123(W.16), <http://www.opsi.gov.uk/legislation/wales/wsi2006/20060123e.htm#n4>

⁸ European Topic Centre on Resource and Waste Management, *Transboundary shipments of waste in the EU: Developments 1995-2005 and possible drivers*, p. 7,

http://eea.eionet.europa.eu/Public/irc/eionet-circle/etc_waste/library?l=working_papers/shipments290208pdf/ EN_1.0_&a=d

⁹ *ibid*, p. 8

¹⁰ *ibid*, p. 11

¹¹ *ibid*, p. 70

¹² *ibid*

¹³ *ibid*, p. 72

¹⁴ *ibid*, p. 8

¹⁵ *ibid*, p. 100

¹⁶ *ibid*

General principles

The Welsh Assembly Government notes that waste management techniques further up the waste hierarchy generate more direct jobs, with the possible exception of waste minimisation¹⁷, although waste minimisation does have an indirect impact on safeguarding jobs through making business more efficient and competitive¹⁸. The European Commission's analysis is that far more jobs are created in recycling than in incineration or landfill: 250 jobs per 10,000 tonnes of material, compared to 20 to 40 for incineration and 10 for landfill¹⁹. Indeed, in 2003, the UK had the fifth highest share in the EU of national industrial employment for recycling, at 0.4 per cent (16,000 employees)²⁰. Employment in the sector in Europe increased by 4.5 per cent per annum over the period 1995-2005²¹, a growth rate far exceeding other industrial sectors.

The proximity principle is a well-established principle for dealing with waste, and it can be described as 'solving problems locally rather than passing them on to other places or future generations'²². It is one of the principles underpinning the Welsh Assembly Government's approach to planning policy for sustainable development²³:

12.5.3 Waste should be managed (or disposed of) as close to the point of its generation as possible, in line with the proximity principle. This is to ensure, as far as is practicable, that waste is not exported to other regions. It also recognises that transportation of wastes can have significant environmental impacts. The waste hierarchy, the proximity principle and regional self-sufficiency should all be taken into account during the determination of the BPEO [Best Practicable Environmental Option] for the network of waste management installations that provides the best solution to meet environmental, social and economic needs.

The proximity principle is also one of the 'key principles' for the future management of waste in Wales²⁴. The Waste Strategy for Wales states²⁵:

Waste should be recovered or disposed of as close as possible to where it has been produced in order to reduce the environmental impact of transporting it and to ensure that those producing the waste take responsibility as far as possible for dealing with it.

Regulation (EC) No 1013/2006²⁶ (the Regulation) states that where waste is being shipped for disposal, Member States should take into account the principles of proximity, priority for recovery and self-sufficiency at Community and national levels. The Regulation also prohibits the shipment outside

¹⁷ Welsh Assembly Government, *Wise about waste: The national waste strategy for Wales*, Part 2, p. 165, June 2002, http://new.wales.gov.uk/topics/environmentcountryside/epq/waste_recycling/wise_about_waste_strategy?lang=en

¹⁸ *ibid*

¹⁹ European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions*, 21 December 2005, http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0666en01.pdf

²⁰ Eurostat, *European business: Facts and figures – Data 1995-2005*, 2006, p. 252,

http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-BW-06-001/EN/KS-BW-06-001-EN.PDF

²¹ *ibid*

²² Welsh Assembly Government, *Planning policy Wales*,

<http://new.wales.gov.uk/docrepos/40382/4038231121/403821/403821/403828/planningpolicy-e.pdf?lang=en>

²³ *ibid*

²⁴ Welsh Assembly Government, *Wise about waste: The national waste strategy for Wales*, Part 1, p. 9, June 2002, http://new.wales.gov.uk/topics/environmentcountryside/epq/waste_recycling/wise_about_waste_strategy?lang=en

²⁵ *ibid*, p. 13

²⁶ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:190:0001:0098:EN:PDF>

the European Free Trade Area (EFTA) of waste for disposal. The Regulation has been transposed in the UK as *The Transfrontier Shipment of Waste Regulations 2007*²⁷. Among other aspects, the transposition describes offences, punishment for which can mean a fine and a term of imprisonment of up to two years.

Directive 2006/12/EC²⁸ also stipulates that Member States must take measures to establish an integrated and adequate network of waste disposal installations, such that the Community as a whole becomes self-sufficient in waste disposal, and that Member States move towards that aim individually.

The Environment Agency notes²⁹:

It is widely recognised that where movements are not properly monitored and controlled the transfrontier movement of hazardous waste can pose a serious threat to both human health and the environment.

The legislation described below is the European response to this challenge.

Legislation

The European Commissioner for the Environment has commented that safe shipment of waste is "one of the Commission's highest environmental priorities"³⁰. The European legal framework covering waste shipments is covered in more detail in [Annex A](#).

The Regulation covers the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment. It incorporates into European legislation the provisions of the Basel Convention³¹. It applies to shipments of waste, both within and into or out of the European Union, to waste transported between Member States but routed through one or more third countries, and to waste transported between third countries but routed through one or more Member States³². Radioactive waste is excluded from the scope of the Regulation³³.

The aim of the Regulation is to reinforce, simplify and specify the existing procedures for controlling waste shipments. The Regulation implements a ban on the mixing of waste during shipment, the making available to the general public of appropriate information, and the obligation on the part of the

²⁷ OPSI, *The Transfrontier Shipment of Waste Regulations 2007*, http://www.opsi.gov.uk/si/si2007/uksi_20071711_en_1

²⁸ European Parliament and European Council, *Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste*, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:114:0009:0021:EN:PDF>

²⁹ Environment Agency, *The transfrontier shipment of waste: A guide to the international shipment of waste*, February 2004, http://www.environment-agency.gov.uk/commondata/acrobat/ep235tsw_446853.pdf

³⁰ European Commission, *Environment: New EU waste shipment legislation comes into force today*, press release, 12 July 2007, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1078>

³¹ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, <http://www.basel.int/> The full list of ratifications of the Convention is available at <http://www.basel.int/ratif/convention.htm>.

The following countries have not ratified the Convention: Democratic People's Republic of Korea, Fiji, Gabon, Grenada, Iraq, Lao People's Democratic Republic, Myanmar, Palau, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Suriname, Tajikistan, Timor-Leste, Tonga, Tuvalu, Vanuata and Zimbabwe. Afghanistan, Haiti and the United States of America have signed the Convention but have not deposited instruments of ratification.

³² European Commission, *Supervision and control of shipments of waste*, <http://europa.eu/scadplus/leg/en/lvb/l11022.htm>

³³ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:190:0001:0098:EN:PDF>

notifier, the competent authority, the consignee and the facilities concerned to keep documents and information.

When exporting waste from a Member State of the European Community, the competent authority of dispatch in the Community must:

- Ensure that any waste exported is managed in an environmentally sound manner³⁴ throughout the period of shipment, including recovery or disposal in the third country of destination
- Prohibit an export of waste to third countries if it has reason to believe that the waste will not be managed in accordance with the requirements of environmentally sound management

Annex VIII to the Regulation provides guidelines for environmentally sound management of exported waste, although these only apply to specific waste streams including those containing chemical waste (such as PCBs), ships, lead acid batteries, metals, and personal computers.

Member States must make provision for the organisation of checks throughout the entire waste shipment and waste recovery/waste disposal process.

Waste for recovery

'Green' listed waste types³⁵ that are destined for recovery are subject to the 'general information' requirements of Article 18 of the Regulation. These are that the dispatcher of the waste must complete an information document that must also be signed by the waste recipient. A blank 'general information' sheet is shown in [Annex B](#) to this paper. The document may be in electronic format with digital signature if this is acceptable to the competent authorities concerned.

Such wastes include vegetable waste, paper waste, textile waste, glass waste, solid plastic waste, electronic scrap suitable for recovery, and metal scrap.

If a planned shipment of waste destined for recovery is determined to be for disposal, the competent authorities of dispatch and destination may object to the shipment. Objections can also be raised if:

The ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non-recoverable fraction do not justify the recovery, having regard to economic and/or environmental considerations.

The Environment Agency is required to consider both environmental and economic factors in deciding whether a transboundary shipment is genuinely being made for the purpose of recovery³⁶.

Amber-listed waste

³⁴ Environmentally sound management is defined under the Regulation as "taking all practicable steps to ensure that waste is managed in a manner that will protect human health and the environment against adverse effects which may result from such waste"

³⁵ See [Annex A](#) for more details

³⁶ Environment Agency, *The transboundary shipment of waste: A guide to the international shipment of waste*, February 2004, http://www.environment-agency.gov.uk/commondata/acrobat/ep235tsw_446853.pdf

'Amber' listed waste types, including all waste destined for disposal, and hazardous and semi-hazardous waste intended for recovery, are subject to the 'prior notification and consent' procedure (see [Annex A](#) for further details of this procedure). Amber-listed waste includes municipal and household waste.

Prohibition of export

Exports to third countries of waste intended for disposal are prohibited, except to EFTA countries which are party to the Basel Convention. The shipment of WEEE to non-OECD countries is banned³⁷. End-of-Life Vehicles (used cars), including those drained of liquids, are subject to a prohibition on export. The European Commission views these bans as a means to prevent large amounts of electronic and electrical waste and end-of-life vehicles being shipped to and dumped in developing countries³⁸.

The Regulation enables an objection to be made to shipments of waste destined for recovery if such recovery were due to take place "in a facility which has lower treatment standards for the particular waste than those of the country of dispatch".

The Environment Agency must prohibit exports of waste to non-OECD countries if it has reason to believe that the waste will not be managed in an environmentally sound manner³⁹, and, 'ideally', the dispatcher of the waste should be able to show the Environment Agency that the receiving facility⁴⁰:

Is operated according to human health and environment protection standards that are broadly equivalent to the standards within the UK.

The Environment Agency states that its enforcement effort will be targeted at⁴¹:

- The export of waste masquerading as 'green list waste' or 'non waste'
- The export of waste to countries that do not want it
- Anyone importing or exporting notifiable (particularly hazardous) waste without prior notification and consent

The UK Plan for Shipments of Waste

³⁷ European Topic Centre on Resource and Waste Management, *Transboundary shipments of waste in the EU: Developments 1995-2005 and possible drivers*, p. 10,

http://eea.eionet.europa.eu/Public/irc/eionet-circle/etc_waste/library?!=working_papers/shipments290208pdf/ EN_1.0_&a=d

³⁸ European Commission, *Environment: New EU waste shipment legislation comes into force today*, press release, 12 July 2007, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1078>

³⁹ Environment Agency, *Safer waste cleaner world: Exporting recyclable waste for recovery in non-OECD countries*, June 2007, <http://publications.environment-agency.gov.uk/pdf/GEHO0607BMXG-e-e.pdf>

⁴⁰ *ibid*

⁴¹ Environment Agency, *The Environment Agency's priorities for enforcing the TFS Regulations*, July 2007, http://www.environment-agency.gov.uk/commondata/acrobat/enforcement_1818563.pdf



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The UK Plan for Shipments of Waste⁴² (the Plan) sets out the UK Government's policy on shipment of waste for disposal to and from the UK. It entered into force on 9 August 2007, replacing its predecessor, the UK Management Plan for Exports and Imports of Waste. Shipments that are not in accordance with the plan are prohibited from entering or exiting the UK. In essence, all shipments to and from the UK of waste for disposal are prohibited, with a small number of exceptions (such as trialling new means of waste disposal, and emergency situations). The Plan also highlights the UK Government's two main policy objectives relating to shipments of waste for recovery:

- To encourage international trade in waste for recovery where this is of environmental benefit in driving up levels of recovery at national, Community and global levels.
- To prevent damage to human health or the environment occurring as a result of this international trade.

⁴² DEFRA, *UK Plan for Shipments of Waste*, 2007,
<http://www.ehsni.gov.uk/waste-shipments.pdf>

2. Summary of the Measure proposals

Introduction

On 20 February 2008, in accordance with Standing Order 23.99 of the National Assembly for Wales, Nerys Evans' proposed Recycling Measure was successful in the ballot of proposed Measures. On 7 May 2008, the Assembly granted leave for Nerys to introduce the proposed Measure.

This consultation document invites comments on the draft proposed Measure before it is presented to the Assembly. Responses to the consultation will inform the final proposals for the Measure which will be introduced for consideration by the Assembly in October 2008.

Although specific questions have been included, comments are welcome on any of the proposals in the proposed Measure.

Legislative background

The constitutional context to this proposal is set out by the Government of Wales Act 2006 (the 2006 Act). It provides a mechanism for enhancing the legislative powers of the National Assembly for Wales.

The Assembly's Standing Orders provide for Measures to be introduced by backbench Assembly Members where the Assembly has legislative competence in a policy area.

The principal power enabling the Assembly to make the proposed Recycling Measure is contained in Matter 12.5 of Schedule 5 to the Government of Wales Act 2006:

Matter 12.5 *Provision for and in connection with—*

- (a) the making of arrangements by relevant Welsh authorities to secure improvement in the way in which their functions are exercised,*
- (b) the making of arrangements by relevant Welsh authorities for the involvement in the exercise of their functions of people who are likely to be affected by, or interested in, the exercise of the functions, and*
- (c) the assessment and inspection of the performance of relevant Welsh authorities in exercising their functions.*

Matters 12.1 to 12.5 were inserted into Schedule 5 by section 235 of the *Local Government and Public Involvement in Health Act 2007*⁴³. The provisions commenced on 30 December 2007⁴⁴.

⁴³ OPSI, [Local Government and Public Involvement in Health Act 2007](#)

⁴⁴ Welsh Assembly Government, [A brief guide to the Legislative Competence of the Assembly](#) [accessed 17 July 2008]

Purpose of the proposed Measure

The purpose of the proposed Measure is to engender greater transparency and openness in the way that Welsh local authorities deal with recycle. In particular, it would require local authorities to make publicly available information about the proportion of the recycle collected from households that is processed:

- Within the local authority's boundaries
- In Wales
- Elsewhere in the UK
- Overseas

The Measure imposes no further duties than making this information publicly available, as far as the information exists. However, it is intended that, as a result of this information, residents will encourage local authorities to use recycling facilities that are closer to the source of the recycle, than those that are further away. It is also expected that the publication of information will lead to increased interest, and therefore participation, in recycling.

Current policy in Wales

The Welsh Assembly Government's waste strategy, *Wise About Waste*, lists both the proximity principle and self sufficiency as some of the 'key principles' underpinning the strategy:

Proximity

2.18 Waste should be recovered or disposed of as close as possible to where it has been produced in order to reduce the environmental impact of transporting it and to ensure that those producing the waste take responsibility as far as possible for dealing with it.

Self sufficiency

2.19 In line with the proximity principle, the waste planning process should ensure that there is sufficient capacity in terms of waste management facilities to manage the wastes produced in any given area. For some types of wastes this could be within a single local authority area, for others it could be within a region of Wales, within the whole of Wales, or the wider UK⁴⁵.

The proximity principle is also one of the principles underpinning the Welsh Assembly Government's approach to planning policy for sustainable development:

12.5.3 Waste should be managed (or disposed of) as close to the point of its generation as possible, in line with the proximity principle. This is to ensure, as far as is practicable, that waste is not exported to other regions. It also recognises that transportation of wastes can have significant environmental impacts. The waste hierarchy, the proximity principle and regional self-sufficiency should all be taken into account during the determination of the BPEO [Best Practicable Environmental Option] for the network of waste management installations that provides the best solution to meet environmental, social and economic needs⁴⁶.

⁴⁵ Welsh Assembly Government, [Wise about Waste: The national waste strategy for Wales](#), p. 13

⁴⁶ Welsh Assembly Government, *Planning policy Wales*, <http://new.wales.gov.uk/docrepos/40382/4038231121/403821/403821/403828/planningpolicy-e.pdf?lang=en>

Relevant policy in England and Scotland

England's *Planning Policy Statement 10: Planning for Sustainable Waste Management*⁴⁷ aims to provide a framework in which communities take more responsibility for their own waste. A key aim of the *Waste Strategy for England*⁴⁸ is to reduce waste by making products with fewer natural resources, breaking the link between economic growth and waste growth. The strategy acknowledges that:

A key to more efficient recovery of materials and energy is the greater segregation and sorting of waste at (or close to) its source by households and businesses. This requires planning for and investment in collection, sorting, reprocessing and treatment facilities by local authorities, businesses and the third sector⁴⁹.

The strategy also states:

We also expect waste producers, particularly local authorities, to ensure that they know where their waste is going and that its onward movement is fully compliant with the controls⁵⁰.

Scotland's *National Waste Plan*⁵¹ aims to follow the self-sufficiency and proximity principle by dealing with waste as close to the source as possible avoiding export to other countries. The plan does make a reference to the fact that this may not always be the best solution and that it is unlikely that all waste can be dealt with within Scotland.

Scotland also aims to follow the proximity principle as far as possible at area waste planning level, although there may be clear benefits from joint infrastructure solutions between areas⁵².

On 28 July 2008, the Scottish Government published a consultation⁵³ on primary legislation to achieve a 'Zero Waste Scotland'. The consultation includes proposed measures to:

- further encourage recycling by giving a power to the Scottish Government to make regulations which would impose duties on public sector bodies and businesses to provide recycling facilities for customers, staff and, where appropriate, members of the public.
- encourage recycling by taking powers to enable the Scottish Government to place a duty on public bodies and businesses to specify a minimum percentage of material made from recycle in procurement contracts.
- ensure more effective planning and policy making on commercial and industrial waste by taking powers to make regulations requiring businesses to send waste data returns to SEPA.

⁴⁷ Department for Communities and Local Government *Planning Policy Statement 10: Planning for Sustainable Waste Management*, 2005 <http://www.communities.gov.uk/documents/planningandbuilding/pdf/147411.pdf>

⁴⁸ Department of Environment, Food and Rural Affairs, *Waste Strategy for England*, 2007 <http://www.defra.gov.uk/environment/waste/strategy/strategy07/pdf/waste07-strategy.pdf>

⁴⁹ Ibid. p.14

⁵⁰ Ibid. p. 44

⁵¹ Scottish Environmental Protection Agency *The National Waste Plan for Scotland*, 2003 <http://www.sepa.org.uk/nws/guidance/nwp.htm>

⁵² Ibid. p.20

⁵³ Scottish Government, *Consultation Paper on Potential Legislative Measures to implement Zero Waste*, July 2008 <http://www.scotland.gov.uk/Publications/2008/07/24155248/0>

Scottish Planning Policy, *SPP 10: Planning for Waste Management*⁵⁴ also highlights the importance of the proximity principal and the need to deal with waste as close as possible to where it is produced to avoid adverse environmental impacts that are associated with unnecessary transport. According to SPP10:

Waste should be handled as close as possible to source. It follows that towns and cities will be the best locations for new waste transfer, separation and handling installations⁵⁵.

Costs and implementation

The costs resulting from this proposed Measure will be incurred almost exclusively by local authorities in Wales. However, the costs are not anticipated to be substantial, and relate mostly to staff costs in the initial information-gathering period.

The process of implementation could follow this example:

1. The local authority gathers the necessary information from all the processors it uses for household recycle.
2. The local authority publishes the required information annually.
3. Repeat steps 1 and 2 annually.

It is presumed that once contact has been made with processors, the same procedures can be followed in subsequent years.

Options

The proposed Measure is not the only option when considering how to improve the transparency of information regarding the destination of recycle collected from households.

The first option is to do nothing. In this 'business as usual' approach, the Welsh public will remain largely ignorant about the destination of their recycle.

The second option is to reach a voluntary agreement with each Welsh local authority, so that each authority will make the information publicly available to its residents. The downside to this approach is that authorities may be unwilling to publish such information if they perceive it to be politically sensitive, or even that information could be withheld for a particular year if changing markets lead to an anomalous volume of export. Additionally, ensuring that all 22 local authorities are reporting comparable information could be problematic.

The third option, as proposed in this Measure, is the only option that would ensure an equal reporting requirement on each local authority that could not be evaded for political expediency.

Summary

⁵⁴ Scottish Government, *Scottish Planning Policy, SPP 10: Planning for Waste Management*, 2007
<http://www.scotland.gov.uk/Publications/2007/08/28161910/0>

⁵⁵ *Ibid.* p.6



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This Measure proposes to require local authorities to make publicly available information about the proportion of the recyclate collected from households that is processed in different locations. In so doing, it encourages the compliance of local authorities with the two principles of proximity and self-sufficiency – both important principles of Welsh waste management.

3. Consultation Questions

1. Do you think that the proposed Measure will achieve the desired aim of improving transparency and openness in the way that Welsh local authorities deal with recycle?
2. Do you consider that the proposed Measure is the best means of improving transparency and openness in the way that Welsh local authorities deal with recycle? If not, which other approaches should be used?
3. Are there additional powers that could be included in the Measure to further promote this approach in local authorities?
4. Do you consider that the implementation of the proposed Measure would lead to residents encouraging local authorities to use recycling facilities that are closer to the source of the recycle, than those that are further away? Do you agree that publication of the required information will lead to increased interest, and therefore participation, in recycling?
5. What unintended consequences, if any, could arise from the implementation of the proposed Measure?
6. What do you estimate the costs of complying with the proposed Measure to be for your organisation? Do you consider these costs to be excessive?

4. Draft Assembly Measure

Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure 200-

A MEASURE of the National Assembly for Wales to make provision for improved community involvement in arrangements made by local authorities in Wales for the shipment outside the European Community and EFTA of waste destined for recovery.

1 Amendment to the Environmental Protection Act 1990 (c.43)

The Environmental Protection Act 1990 (c.43) is amended by inserting after section 55 –
“55A Duties on authorities in Wales in relation to waste destined for recovery

- (1) This section applies to a waste collection authority in Wales or to a waste disposal authority in Wales.
- (2) If an authority to which this section applies sells or otherwise disposes of waste destined for recovery that authority must, if subsection (4) applies, prepare, in respect of each financial year, a statement which contains the information prescribed by subsections (5) and (10).
- (3) In this section –
 - (a) “waste destined for recovery” means waste which the authority intends should be subject to a recovery operation,
 - (b) a “recovery operation” means an operation provided for in Annex IIB to the Waste Framework Directive, and
 - (c) the “Waste Framework Directive” means Directive 2006/12/EC of the European Parliament and of the Council of 5th April 2006.
- (4) This subsection applies if, during the financial year in question, any of the waste sold or otherwise disposed of by the authority and which is destined for recovery is shipped outside the European Community and EFTA.
- (5) The information which the statement referred to in subsection (2) must contain in respect of any shipment is –
 - (a) the total quantity of the waste shipped,
 - (b) the quantity of the waste shipped which was ultimately subject to a recovery operation,
 - (c) the nature of that operation or operations,
 - (d) the quantity of the waste shipped which was not ultimately subject to a recovery operation,
 - (e) the manner in which that waste was disposed of,
 - (f) in relation to every quantity of waste subject to a recovery operation or otherwise disposed of, the location at which that operation or disposal took place.

- (6) References in subsection (5) to a quantity are to the weight of the waste to the nearest tonne.
- (7) If any quantity contained in a statement referred to in subsection (2) is estimated the statement must state that this is so and must set out the method used for estimating the quantity.
- (8) A statement prepared pursuant to subsection (2) must be published by the authority on its web-site.
- (9) Publication of the statement must begin within 6 months of the end of the financial year to which it relates and must continue for 6 months or until the end of the financial year in which it first appears on the authority's website, whichever is the later.
- (10) The statement referred to in subsection (2) must also include an invitation to the public to make representations in writing to the authority as to the appropriateness, having regard to the proximity principle, of the arrangements made by the authority under which waste destined for recovery has been caused or permitted to be shipped outside the European Community or EFTA.
- (11) In sub-section (10), "the proximity principle" means the principle that waste should be disposed of in one of the nearest appropriate installations.
- (12) The authority, when deciding what future arrangements of the kind referred to in subsection (10), if any, which it should make, must have regard to any representations of the kind referred to in that subsection.
- (13) When preparing and publishing a statement pursuant to subsection (2) the authority must have regard to any guidance given by the Welsh Ministers as to the form of the statement.
- (14) The Welsh Ministers may by order amend any of the definitions contained in subsection (3).
- (15) The power to make an order under subsection (14) is exercisable by statutory instrument.
- (16) A statutory instrument containing an order under subsection (14) may not be made unless a draft of the order has been laid before, and approved by, a resolution of the National Assembly for Wales."

2 Short title and commencement

- (1) This Measure may be referred to as the Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure 200-.
- (2) Subject to subsection (3), this Measure comes into force on the day on which it is approved by Her Majesty in Council.
- (3) The duty to prepare a statement under subsection (2) of the section inserted into the Environmental Protection Act 1990 (c.43) by section 1 of this Measure does not apply in respect of the financial year in which this Measure comes into force.

5. Explanatory Notes

1. Section 1 amends the Environmental Protection Act 1990 (“the 1990 Act”) by the insertion of a new section 55A.
2. Subsections (1) and (2) place a duty on waste collection and waste disposal authorities in Wales (defined in section 30(3)(bb) and (2)(f) respectively of the 1990 Act as county or county borough councils) which sell or otherwise dispose of waste destined for recovery to prepare, in respect of each financial year, a statement containing prescribed information.
3. Subsection (3) sets out relevant definitions.
 - “waste destined for recovery” means waste which the authority intends should be subject to a recovery operation.
 - “recovery operation” means an operation provided for in Annex IIB of the Waste Framework Directive being:
 - **R 1** Use principally as a fuel or other means to generate energy
 - **R 2** Solvent reclamation/regeneration
 - **R 3** Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes)
 - **R 4** Recycling/reclamation of metals and metal compounds
 - **R 5** Recycling/reclamation of other inorganic compounds
 - **R 6** Regeneration of acids or bases
 - **R 7** Recovery of components used for pollution abatement
 - **R 8** Recovery of components from catalysts
 - **R 9** Oil re-refining or other reuses of oil
 - **R 10** Land treatment resulting in benefit to agriculture or ecological improvement
 - **R 11** Use of wastes obtained from any of the operations numbered R1 to R 10
 - **R 12** Exchange of wastes for submission to any of the operations numbered R 1 to R 11
 - **R 13** Storage of wastes pending of the operations numbered R 1 to R 12 (excluding temporary storage, pending collection, on the site where it is produced).
 - The “Waste Framework Directive” means Directive 2006/12/EC of the European Parliament and of the council dated 5 April 2006 on waste.
4. Under subsection (4) the duty to prepare the statement applies if, during the financial year in question, any of the waste sold or otherwise disposed of by the authority and which is destined for recovery is shipped outside the European Community and EFTA.
5. Subsection (5) provides that the statement must contain the following information:
 - The total quantity of the waste shipped (to the nearest tonne or, if the quantity is estimate, that this is so and must set out the method use for estimating the quantity – subsections (6) and (7))
 - The quantity of waste shipped which was ultimately subject to a recovery operation
 - The nature of the operation or operations
 - The quantity of waste shipped which was not ultimately subject to a recovery operation
 - The manner in which the waste was disposed of
 - In relation to every quantity of waste subject to a recovery operation or otherwise disposed of, the location at which that operation or disposal took place.
6. Subsection (8) requires the authority to publish the statement on its website. Under subsection (9) publication of the statement must begin within 6 months of the end of the financial year to which it relates and continue for 6 months or until the end of the financial year which ever the later.

7. The statement must, under subsection (10) include an invitation to the public to make representations in writing to the authority as to the appropriateness, having regard to the proximity principle, of the arrangements made by the authority under which waste destined for recovery has been caused or permitted to be shipped outside the European Community or EFTA.
8. Subsection (11) clarifies the “proximity principle”: waste should be disposed of in one of the nearest appropriate installations.
9. Subsection (12) requires an authority to have regard to representation made under subsection (10) when deciding on future arrangements to be made under that subsection.
10. Subsections (13) to (16) provide that;
- In preparing and publishing a statement under subsection (2) the authority must have regard to any guidance issued by the Welsh Ministers (Subsection (13))
 - The Welsh Ministers may by order amend any of the definitions contained in subsection (3) and that the power to make such an order is to be exercisable by statutory instrument a draft of which must be laid before and approved by resolution of the National Assembly before being made (affirmative procedure) (subsections 14) to (16)).
11. Section 2 deals with the short title and commencement. The Measure will come into force on the day on which it is approved by Her Majesty in council save that the duty to prepare a statement under section 55A(2) will not apply in respect of the financial year in which the Measure comes into force.

Annex A Legislation

International legislation

The supervision and control of transboundary shipment of waste throughout the EU, the European Free Trade Association, the Organisation for Economic Cooperation and Development (OECD), and third parties covered by the Basel Convention⁵⁶, is covered by a system established by the European Union⁵⁷.

Regulation (EC) No 1013/2006⁵⁸ (the Regulation) covers the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment. It incorporates into European legislation the provisions of the Basel Convention. It applies to shipments of waste, both within and into or out of the European Union, to waste transported between Member States but routed through one or more third countries, and to waste transported between third countries but routed through one or more Member States⁵⁹.

This Regulation reduces the three previous waste shipment control procedures to two:

- The procedure in which shipments of non-hazardous waste intended for recovery ('green' listed waste (Annex III)) are accompanied by certain information.
- The procedure for prior written notification and consent, which is the procedure applicable to all shipments of waste intended for disposal, and to hazardous and semi-hazardous waste intended for recovery ('amber' listed waste (Annex IV)). Mixed municipal waste is explicitly included under this procedure.

Waste that is prohibited for shipment features in Annex V.

Waste shipments must be the subject of a contract between the person responsible for shipping the waste, or having it shipped, and the consignee of such waste.

Under the notification procedure, the notification must be submitted by the notifier only to the competent authority of dispatch which, in turn, will be responsible for passing it on to the competent authorities of destination and transit. The competent authorities must give their consent (with or without conditions) or express their objections within 30 days. Interim recovery and disposal facilities are bound by the same obligations as final recovery and disposal facilities. The authorisation of a shipment involving interim operations can only be sanctioned if the shipment of the waste in question has also been authorised.

⁵⁶ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, <http://www.basel.int/>
The full list of ratifications of the Convention is available at <http://www.basel.int/ratif/convention.htm>.

The following countries have not ratified the Convention: Democratic People's Republic of Korea, Fiji, Gabon, Grenada, Iraq, Lao People's Democratic Republic, Myanmar, Palau, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Suriname, Tajikistan, Timor-Leste, Tonga, Tuvalu, Vanuata and Zimbabwe. Afghanistan, Haiti and the United States of America have signed the Convention but have not deposited instruments of ratification.

⁵⁷ European Commission, *Supervision and control of shipments of waste*, <http://europa.eu/scadplus/leg/en/lvb/l11022.htm>

⁵⁸ Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:190:0001:0098:EN:PDF>

⁵⁹ European Commission, *Supervision and control of shipments of waste*, <http://europa.eu/scadplus/leg/en/lvb/l11022.htm>

If a shipment cannot be completed (including recovery or disposal), the notifier must take the waste back, normally at his own expense. The above rule applies to all types of waste, subject to certain exceptions: if there is another way of recovering or disposing of this waste or if the waste has been irretrievably mixed with other types of waste. In the case of an illicit shipment, the notifier or the consignee must, to the extent that the illegality is attributable to one or other of them, take back, recover or dispose of the waste.

The Regulation includes other general provisions, such as a ban on the mixing of waste during shipment, the making available to the general public of appropriate information, and the obligation on the part of the notifier, the competent authority, the consignee and the facilities concerned to keep documents and information.

Exports to third countries of waste intended for disposal are prohibited, except to EFTA (European Free Trade Association) countries which are party to the Basel Convention. Exports of hazardous waste intended for recovery are prohibited, except those directed to countries to which the OECD decision applies, and to third countries which are party to the Basel Convention or countries which have concluded a bilateral agreement with the Community.

Imports from third countries of waste intended for disposal or recovery are subject to the same rules as exports.

Member States must make provision for the organisation of checks throughout the entire waste shipment and waste recovery/waste disposal process.

As far as waste for recycling is concerned, two categories of waste are defined under the Regulation (Table 1). 'Green' listed wastes are those listed in Annex IX to the Basel Convention⁶⁰, along with a small number of additional waste types (Annex III to the Regulation). 'Amber' listed wastes are those listed in Annexes II and VIII to the Basel Convention, along with a small number of additional waste types (Annex IV to the Regulation). Other wastes are largely prohibited from export, and are detailed in the Regulation's Annex V.

Table 1 Categories of waste as defined by the Regulation (EC) No 1013/2006

Category	Examples
Green list	Vegetable waste and fish waste Wood waste Textile waste Paper waste Solid plastic waste Glass waste Electronic scrap suitable for recovery Metal waste and scrap (specific metals) Iron and steel manufacturing waste

⁶⁰ Basel Convention, *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, <http://www.basel.int/text/con-e-rev.pdf>

Amber list	Metal waste (specific metals) Waste batteries and lead-acid batteries Glass waste from cathode-ray tubes Waste oils unfit for their original use Waste containing PCBs Pharmaceutical production waste Municipal/household waste
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The 'general information' procedure

The procedure for shipping green-listed waste for recovery is as follows:

1. The person in the dispatch country responsible for arranging the shipment must complete an accompanying information document.
2. The document must be signed by the recovery facility upon receipt of the shipment.

Waste shipped under the general information procedure must not be mixed with other waste during shipment.

If recovery cannot be completed as intended, or where the shipment is illegal, the person arranging the shipment must take the waste back or ensure its recovery in an alternative way.

The Environment Agency provides the following examples about green-listed waste⁶¹:

For example, if a batch of waste paper contained clinical waste such as used needles, the waste could not be moved under green list controls. Alternatively, the waste paper might be contaminated with broken glass, which would mean it could not be recovered in an environmentally sound manner. Again, this type of waste could not be moved under green list controls.

The 'prior written notification and consent' procedure

The procedure for shipping amber-listed waste (and green-listed waste destined for disposal) is as follows:

1. The notifier submits a prior written notification to the competent authority of dispatch (including, upon request, the contract that has been concluded with the consignee for the recovery or disposal of the waste).
2. The competent authority issues a 'notification document' and a 'movement document'.
3. A financial guarantee or equivalent insurance is submitted either at notification, or, if allowed by national legislation, prior to shipment commencing.
4. If the final destination is not the first country of destination, then an additional notification is required as specified in Article 15(f).
5. Once consent from the competent authorities of dispatch, transit (if necessary), and destination has been received, the movement document must be completed by the notifier.

⁶¹ Environment Agency, *Safer waste cleaner world: Exporting recyclable waste for recovery in non-OECD countries*, June 2007, <http://publications.environment-agency.gov.uk/pdf/GEHO0607BMXG-e-e.pdf>

6. Copies of the movement document must be sent to the competent authorities and the consignee at least three working days before shipment commences.
7. The receiving facility must provide written confirmation of receipt within three days of the shipment's arrival.

The notifier may submit a general notification covering several shipments if each shipment of waste has essentially the same characteristics, it is shipped to the same consignee and facility, and it takes the same shipment route.

The contract must include provision for the notifier to take back the waste if the recovery or disposal has not been completed as intended, or if the shipment is illegal (in the latter case, the consignee is responsible for recovery or disposal). The recovery or disposal facility must provide certification that the waste has been recovered or disposed of in accordance with the notification and its conditions.

The financial guarantee must cover the costs of transport, recovery or disposal, and storage for 90 days.

Any of the competent authorities of dispatch, transit or destination may apply conditions to the shipment. Such conditions must be relayed in writing to the notifier, with copies to the competent authorities concerned.

Consent to a planned shipment lasts for no more than one calendar year.

When exporting waste from a Member State of the European Community, the competent authority of dispatch in the Community must:

- Ensure that any waste exported is managed in an environmentally sound manner throughout the period of shipment, including recovery or disposal in the third country of destination
- Prohibit an export of waste to third countries if it has reason to believe that the waste will not be managed in accordance with the requirements of environmentally sound management