



Department for
Communities and
Local Government

Guidance for local planning authorities on implementing planning requirements of the European Union Waste Framework Directive (2008/98/EC)

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Introduction

The Waste Framework Directive (2008/98/EC) (“the Directive”) provides an overarching legislative framework for the management of waste across Europe. Its transposition in England is now largely through the Waste (England and Wales) Regulations 2011 (SI 2011 No 988) (“the 2011 Regulations”), which came into force on 29 March 2011¹.

This guidance note provides advice on the measures required by local planning authorities to ensure compliance with the Directive. A “local planning authority” in this context predominantly means the waste planning authority. But other “non-waste” local planning authorities are also expected to play a role in meeting the Directive requirements since they also influence how waste management is provided for in their areas.

So although this guidance is aimed primarily at waste planning authorities, it highlights the main legal and policy provisions of relevance to all planning authorities and the action we expect them to take to assist them in ensuring compliance with the Directive. It is the responsibility of each waste planning authority to satisfy itself that it is meeting the requirements of the 2011 Regulations and the Directive, based on its own legal advice.

The preparation of this guide draws on the outcome of two consultation exercises on the transposition of the Directive carried out in 2009 and 2010, and the final Impact Assessment which identified additional burdens on waste planning authorities. It should be read alongside the Government’s planning policy for waste management, currently set out in Planning Policy Statement 10² and its companion guide³.

Background

As set out in its review of waste policies, published in June 2011, the Government is committed to a “zero-waste economy” in which material resources are re-used, recycled or recovered wherever possible, and only disposed of as the option of very last resort. The Government’s ambitions for waste highlight the importance of putting in place the right waste management infrastructure at the right time and in the right location. The planning system is pivotal to the adequate and timely provision of these new waste management facilities that are needed to help drive the management of waste up the waste hierarchy.

¹ <http://www.legislation.gov.uk/uksi/2011/988/contents/made>

² <https://www.gov.uk/government/publications/planning-for-sustainable-waste-management-planning-policy-statement-10>

³ <https://www.gov.uk/government/publications/planning-for-sustainable-waste-management-a-companion-guide-to-planning-policy-statement-10>

The Government is committed to supporting local authorities to introduce, retain or reinstate a weekly collection of residual waste and/or recycling (for example food waste). Its Weekly Collection Support Scheme has been set up to support comprehensive and cost effective weekly collections that harness innovation, use new technologies, and spread reward schemes to increase innovation. As well as the overarching aim of moving waste up the waste hierarchy, the provision of new waste management facilities of the right type, in the right place, and at the right time, is essential to reduce the dependency on landfill to enable local authorities to provide weekly collections of residual waste.

All local planning authorities have a role to play in meeting the requirements of the Directive – including by driving waste up the hierarchy. However, much of the responsibility for delivering waste objectives lies with waste planning authorities, who have a statutory duty to prepare a minerals and waste development scheme and to prepare a local waste plan⁴ in accordance with that scheme, either on their own or as part of a wider local plan. There is a clear need for robust and up-to-date local waste plans to guide and steer development, and attract inward investment necessary to help meet European targets for diverting waste from landfill, recycling and delivering renewable energy.

Current planning policy in Planning Policy Statement 10 sets out the approach to be followed by waste planning authorities in identifying suitable sites and areas for new waste management facilities, and determining waste planning applications. As a general rule these plans should set out what developments and facilities are required and where they are to be located. Planning Policy Statement 10 will be revised and annexed to the new National Waste Management Plan which the Government aims to publish by 2013. Until that Plan is finalised, the current Planning Policy Statement will remain in force.

The local waste plan should be supported by regular monitoring. Legislation (e.g. sections 13-16 of the Planning and Compulsory Purchase Act 2004) establishes a duty for waste planning authorities to keep planning issues under review. This ensures continuing development of the evidence base for assessing the need for new waste management facilities and to determine whether waste policy objectives are being met.

A combination of up-to-date waste plans and regular monitoring will go a considerable way to meeting the requirements of the Directive. However, the Directive sets out new provisions which waste planning authorities should demonstrate when discharging their planning responsibilities.

⁴ A local waste plan can consist of relevant waste policies in a broader local plan and / or a set of development plan documents

What wastes are covered?

The Directive applies to most wastes but certain types of waste are excluded from its scope⁵. Notwithstanding these exclusions, we expect waste planning authorities to plan for the sustainable management of waste including, but not exclusively:

- Municipal/household;
- Commercial/industrial;
- Construction/demolition;
- Low Level Radioactive Waste;
- Agricultural waste;
- Hazardous waste; and
- Waste water.

Relevant Articles from the Directive

Waste planning authorities play a role in implementing the following Articles of the 2008 Directive:

- **Article 4:** Waste Hierarchy;
- **Article 13:** Protection of human health and the environment
- **Article 16:** Principles of proximity and self-sufficiency
- **Article 28:** Waste Management Plans
- **Article 34:** Periodic Inspections

In addition, all local planning authorities have a role in implementing Articles 4 and 13.

Articles 13, 16 and 34 are implemented in Part 6 of the 2011 Regulations. Implementation of the remaining Articles relies on local planning authorities discharging specific statutory responsibilities under the planning system.

A summary of these articles and actions on waste or local planning authorities is set out at annex 2.

Requirements

Article 4: Waste Hierarchy

The Directive places a duty to apply the waste hierarchy as a priority order in waste management policy and legislation. The hierarchy is applied to the planning system through Planning Policy Statement 10, which makes it clear

⁵ The exclusions are set out in Article 2 of the Directive.

that all planning authorities should, to the extent appropriate to their responsibilities, prepare and deliver planning strategies which drive waste management up the hierarchy, addressing waste as a resource and looking to dispose as the last option.

Planning Policy Statement 10 is also capable of being a material consideration when determining individual proposals for waste management facilities. However, the waste hierarchy is also integral to the National Waste Management Plan for England (currently the Waste Strategy for England 2007), to which all local planning authorities must also have regard in preparing their plans.

For those local planning authorities which do not deal directly with waste planning applications, they are still expected to help to contribute to delivering the waste hierarchy. This includes:

- i) working constructively with waste planning authorities to identify and protect those sites needed for waste management facilities. It is important that, when discharging their planning responsibilities, local planning authorities consider the need for waste management alongside other spatial planning objectives. For example, when undertaking Employment Land Reviews, it is important to consider the full range of employment opportunities, including appropriate waste management proposals, before releasing sites for non-employment uses, such as housing. Local planning authorities should also seek to integrate local waste management opportunities in proposed new development;
- ii) considering, where relevant, the likely impact of proposed, non-waste related development on existing waste management sites and on sites and areas allocated for waste management. Planning authorities should ensure that any such proposal does not prejudice the implementation of the waste strategy set out in the local waste plan;
- iii) promoting sound management of waste from any proposed development, such as encouraging on site management of waste where this is appropriate, or including a planning condition to encourage the developer to set out how he/she plans to deal with the waste arising from the development. In line with the 2011 Regulations the developer as waste holder has responsibility to manage waste up the hierarchy. Defra has produced guidance⁶ to guide waste holders on the most appropriate form of handling waste.
- iv) encouraging sustainable design of any proposed development through the use of recycled products, recovery of on-site material and the provision of facilities for the storage and regular collection of waste.

⁶ <http://www.defra.gov.uk/publications/files/pb13530-waste-hierarchy-guidance.pdf>

Article 13: Protection of Human Health and the Environment

Local planning authorities are obliged under Regulation 18 of the 2011 Regulations to ensure that any waste is handled in a manner which guards against harm to human health and the environment. This duty applies when authorities exercise their planning functions relating to waste management.

Further, the expectation on waste planning authorities is that, when preparing local waste plans, they should test the suitability of proposed sites for development against paragraph 21(i) of Planning Policy Statement 10 and in doing so consider the factors set out in Annex E of the PPS. The role of waste planning authorities in developing local waste plans and considering individual planning applications should be to seek to control the development and use of land in the public interest. They are expected to focus on whether waste-related development is an acceptable use of the land, and on the impacts of the proposed uses on the development and use of land. Waste planning authorities should work on the assumption that the relevant pollution control regime will operate effectively.

Article 16: Principles of Self Sufficiency and Proximity

Article 16 reiterates and refines previous longstanding Directive obligations for Member States to embrace the principles of proximity and self-sufficiency. These principles are refined primarily because of the extension of the proximity principle to require Member States to establish an integrated and adequate network of waste disposal installations and installations for the recovery of mixed municipal waste collected from private households. Waste planning authorities are required, under regulation 18 of the 2011 Regulations, to have regard to these requirements when exercising their planning functions relating to waste management.

The requirement to be self-sufficient in waste disposal is set out at national level, and is given effect through the UK Plan for Shipments of Waste 2007⁷. Delivery of both this principle and the proximity principle is recognised by Planning Policy Statement 10, which advises that waste planning authorities should provide a framework in which communities should take more responsibility for their own waste, and enable sufficient and timely provision of waste management facilities to meet the needs of their communities.

The Government considers that local authorities are best placed to help create and deliver the waste management strategy for their areas. Waste Planning Authorities have a key role to play in making sure that waste plans inform and

⁷ <http://www.doeni.gov.uk/niea/waste-shipments.pdf>

are informed by relevant waste documents – such as the Municipal Waste Management Strategy and other relevant strategies of the waste disposal and collection authorities (including any strategy to support comprehensive and frequent rubbish and recycling collections). In meeting the requirement of the proximity principle, there is no expectation that each waste planning authority will deal solely with its own waste. For instance, there are clearly some wastes which are produced in small quantities for which it would be uneconomic to have a facility in each local authority. There could also be significant economies of scale for local authorities working together to assist with the development of a network of waste management facilities to enable waste to be handled effectively. The new statutory duty to co-operate⁸ with neighbouring and other authorities applies when preparing waste plans and other development plan documents.

Article 28: Waste Management Plans

The Waste Framework Directive 2008 requires Member States to draw up one or more waste management plans that cover its entire geographical area, and for those plans to contain specific information.

Regulations 7 and 8 and Schedule 1 to the 2011 Regulations set out what is necessary to meet the requirements of Article 28. These regulations do not specifically identify the documents which will constitute a waste management plan for the purposes of the Directive. Implementation is likely to be achieved through a number of discrete documents. This includes a National Waste Management Plan prepared by Government, to which waste planning authorities must have regard when preparing their local plans. Until this Plan has been updated (which Government is aiming to do by 2013), waste planning authorities will need to have regard to the existing national waste management plan; the Waste Strategy for England 2007, and to the planning policies in Planning Policy Statement 10.

However, the Government has made it clear that local waste plans are a necessary part of the implementation of this Article of the Directive. Waste planning authorities therefore have specific responsibility for implementing a number of obligations, as set out below. The main route for compliance will be through the preparation of up-to-date local plans. However, there is a clear role for Annual Monitoring Reports to complement evidence provided in the local plan.

- **Details of existing major disposal and recovery installations**

The Government considers that compliance with this requirement means details should be included of any proposal that has received planning permission, and which is operational. Waste planning authorities should already provide this information on a proposals map or as part of their local waste plan;

⁸ Section 33A of the Planning and Compulsory Purchase Act 2004 (inserted by section 110 of the Localism Act 2011). Section 33A came into force on 15 November 2011.

where this is not the case, steps should be taken to provide this information. Information on the size and location of existing major waste management facilities should already be available from the Environment Agency⁹. This information should be supplemented as appropriate through Annual Monitoring Reports produced by waste planning authorities. Unless included as part of the local waste plan, waste planning authorities are strongly advised to use the Annual Monitoring Report to set out and identify the location of these facilities, which it can then update on a regular basis.

- **An assessment of the need for the closure of existing waste management facilities and the need for additional waste installation infrastructure**

The Government expects that this information should be made available as part of the preparation of local waste plans, using the best available information from a number of sources. This might include:

- i) the Environment Agency which holds information on waste licenses, applications and capacity, and which is required to inspect a number of waste management facilities as part of the permitting regime. It may be able to assist with the identification of facilities which might be suitable for closure either because, for example, it is aware that certain facilities might not be able to comply with the requirements of the permit, or because it is able to keep track of the capacity of landfill facilities and can recognise those that are over or under capacity over a period of time. The Environment Agency should share this information with waste planning authorities to assist with the assessment of need for additional facilities; or
- ii) waste management companies who know and are willing to share their plans for closing facilities.

A statement covering future requirements, including replacement of time limited facilities, should be included in the final version of the plan. Following the preparation of the local plan, waste planning authorities should use Annual Monitoring Reports to monitor:

- the number of permissions granted and the capacity of those additional facilities, or extensions of existing facilities, where permission has been granted which are then operational or are under construction;
- sites that have been closed or have reached the end of their lifetime. Such information can be obtained from either the site operator/owner or, in the case of sites covered by an environmental permit, from the Environment Agency.

⁹ For example, through the Environment Agency 'waste infrastructure report' <http://www.environment-agency.gov.uk/research/library/data/134327.aspx> or from permitting data

By monitoring planning permissions, it is possible to identify the potential amount of new waste management capacity for future years and a comparison made between completed capacity and permissions granted can help to give an indication of trends in waste management. It will also contribute to the baseline information to inform any reviews of plans.

Annex 1 contains an example of the sort of table that could be used to present the figures required to report on the capacity of waste management facilities. Such a table would need to be accompanied by a written commentary that sets out the existing position having regard to the local waste plan and provides sufficient information about the provision that has been made for dealing with waste, so as to inform on where there are shortfalls in meeting demand.

- **Sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations**

European case law indicates that the local waste plan should show existing and proposed waste management sites on a geographical map, and/or include sufficiently precise locational criteria for identifying such sites. The Government considers that locational criteria may include clearly defined locations and/or areas of search and these should be clearly identified in the plan itself.

Article 34: Inspections

When discharging their planning responsibilities, Article 34 of the Directive and Regulation 19(2) of the 2011 Regulations require waste planning authorities to carry out appropriate inspections of waste management facilities. This has carried forward existing statutory requirements under the Environmental Permitting (England and Wales) Regulations 2010. There is no prescription on the frequency and requirements of such inspections, which is left to the discretion of waste planning authorities to determine. In practice such inspections are likely to occur either as part of any wider inspection to check compliance with the terms of the planning permission, or as part of an investigation of any allegation of a breach of planning control such as a failure to comply with planning conditions.

Checklist

Does your local waste plan :

- set out how the key planning objectives in Planning Policy Statement 10, including the waste hierarchy, will be delivered?
- provide an assessment of existing and future generation of waste arising over the plan period?
- identify where the waste will be managed?
- consider and clearly identify waste management capacity from existing waste management facilities?
- consider and clearly identify future capacity from existing waste management facilities?
- identify the number and type of waste management facilities required – including existing facilities - along with specific sites or broad locations?

Annex 1

Annual capacity of waste management facilities

Type of waste site	Current Permitted capacity / throughput (tonnes per annum)	Planned capacity (with approx start date)	Remaining capacity (if appropriate)	End date (if appropriate)	Site address (or location on allocations/AMR map)
Recycling					
Composting					
Household Waste Recycling Sites					
Transfer stations (where recycling takes place)					
Materials Recycling Facilities					
Construction and Demolition waste recycling					
Tyre Recycling					
Total					
Recovery					
Energy from waste					
Metal Recycling and End of Life Vehicle Facilities					
Total					
Treatment					
Mechanical Biological Treatment					

(with Anaerobic Digestion)					
Anaerobic digestion					
Thermal Treatment (Energy recovery)					
Clinical Waste Transfer and Treatment					
Soil Treatment					
Total					
Disposal					
Incineration (without energy recovery)					
Land fill site					
Total					

Waste Framework Directive 2008/98/EC	Delivery mechanism / Action
<p><u>Article 4: Waste Hierarchy</u> 1. The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:</p> <p>(a) prevention; (b) preparing for re-use; (c) recycling; (d) other recovery, e.g. energy recovery; and (e) disposal.</p>	<p>Waste planning authorities need to consider the hierarchy of waste management options when drawing up local waste plans in line with Planning Policy Statement 10. The waste hierarchy is also capable of being a material consideration when determining individual proposals for waste management facilities. All local planning authorities can make a contribution to promoting the sound management of waste as part of any proposed development.</p>
<p><u>Article 13: Protection of Human Health and the Environment</u> Member states shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:</p> <p>(a) without risk to water, air, soil, plants or animals; (b) without causing a nuisance through noise or odours; and (c) without adversely affecting the countryside or places of special interest.</p>	<p>Local planning authorities are obliged under Regulation 18 of the 2011 Regulations to ensure that any waste is handled in a manner which guards against harm to human health and the environment when exercising their planning functions to the extent that those functions relate to waste management.</p>
<p><u>Article 16: Principles of self-sufficiency and proximity</u> 1. Member States shall ... establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households.</p> <p>3. The network shall enable</p>	<p>Waste planning authorities should ensure that, as far as is practicable, sufficient waste disposal facilities and facilities for the recovery of mixed municipal waste collected from households exist within their local waste plan area.</p> <p>Waste planning authorities should ensure that</p>

<p>waste to be disposed of or ... recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.</p>	<p>waste disposal facilities and facilities for the recovery of mixed municipal waste collected from households are appropriately sited to ensure compliance with the proximity principle. This can include joint working with other planning authorities to develop an extensive network of sites to enable effective waste management.</p>
<p>Article 28: Waste Management Plans</p> <p>3. The waste management plans <u>shall contain</u>, as appropriate and taking into account the geographical level and coverage of the planning area, at least the following:</p> <p>(b) existing ... major disposal and recovery installations</p> <p>(c) an assessment of the need ... for closure of existing waste installations, additional waste installation infrastructure in accordance with Article 16 ...</p> <p>(d) sufficient information on the location criteria for site identification and on the capacity of future disposal or major recovery installations</p>	<p>Waste planning authorities should ensure that there is sufficient information in the local waste plan and/or annual monitoring reports to determine the location and capacity of existing major disposal and recovery installations.</p> <p>Waste planning authorities should undertake an assessment of the need for closure of exiting waste installations and an assessment of the need for additional waste installation as part of the preparation of local authority waste plans. Waste planning authorities should keep these assessments under review through the production of Annual Monitoring Reports.</p> <p>Waste planning authorities should ensure that there is sufficient information in the local waste plan and annual monitoring reports to determine the location and capacity of future disposal or major recovery installations.</p>
<p><u>Article 34: Inspections</u></p> <p>1. Establishments or undertakings which carry out waste treatment operations.... which collect or transport waste on a professional basis, brokers and dealers which produce hazardous waste shall be subject to appropriate periodic inspections by the competent authorities.</p>	<p>When discharging their planning responsibilities waste planning authorities are expected to carry out appropriate inspections of waste facilities. In practice such inspections are likely to occur either as part of a wider inspection of ensuring compliance with the terms of the planning permission or in investigating any allegation of a breach of planning conditions.</p>