



27 September 2012

## WOOD WASTE LANDFILL RESTRICTIONS IN ENGLAND

### RESPONSE TO CALL FOR EVIDENCE

#### INTRODUCTION

1. The UK Environmental Law Association (**UKELA**) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study and formulation of environmental law in the UK and the European Union. UKELA attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Waste Working Party.
3. UKELA makes the following comments on Defra's Call for Evidence on wood waste restrictions in England. UKELA has specific comments in response to only three of the questions raised.

**Q.1. DO YOU KNOW OF ANY REASONS WHY ANY OF THESE TYPES OF WOOD WASTE, OR ANY OTHERS SHOULD NOT BE INCLUDED IN ANY POTENTIAL RESTRICTIONS? PLEASE PROVIDE SUPPORTING EVIDENCE?**

4. UKELA notes the intention expressed in paragraphs 5 and 6 of the Call for Evidence to use the definition of waste as set out in the EU Waste Framework Directive (2008/98/EC) and to include "all wood waste" in the scope of potential restrictions. Defra will be well aware of the difficulties with the legal definition of waste, notwithstanding the guidance on the issue that has recently been issued by the European Commission<sup>1</sup> and by Defra itself<sup>2</sup>. UKELA has identified a number of scenarios where it is not clear whether wood waste would or should fall within the scope of any potential restrictions. These include:
  - (a) Wood waste placed in non-recyclable waste containers by householders and collected as part of municipal waste collections. If this waste is not sorted at a MRF, it may well go to landfill.
  - (b) Certain waste products may primarily comprise one type of material, but also include small amounts of wood. An example would be a metal-framed chair with a wooden seat. This type of waste may be taken to a civic amenity site and put in a general non-recyclable waste skip to go to landfill. Is it Defra's expectation that

<sup>1</sup> Guidance on the interpretation of key provisions of Directive 2008/98/EC on waste, June 2012: [http://ec.europa.eu/environment/waste/framework/pdf/guidance\\_doc.pdf](http://ec.europa.eu/environment/waste/framework/pdf/guidance_doc.pdf)

<sup>2</sup> Guidance on the legal definition of waste and its application, August 2012: <http://www.defra.gov.uk/publications/files/pb13813-waste-legal-def-guide.pdf>

UK Environmental Law Association: making the law work for a better environment

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measures would need to be put in place at some stage in the waste processing chain to remove the wooden components?

- (c) Some wood waste may be contaminated with other materials such as nails, screws and glass (this is likely to be the case for much wooden furniture and construction waste). How does Defra propose that such waste be dealt with? The contaminating materials may make it impractical to re-use, recycle or recover the wood.
5. UKELA suggests that, to provide legal clarity over which types of wood waste are covered by any restrictions, certain categories contained in Schedule 1 of the List of Wastes (England) Regulations 2005 be used for reference. The following categories are suggested:
- (a) 03 01 wastes from wood processing and the production of panels and furniture (waste categories 03 01 01, 03 01 04\*, 03 01 05 and 03 01 99).
  - (b) 03 03 01 waste bark and wood.
  - (c) 15 01 03 wooden packaging.
  - (d) 18 02 01 wood.
  - (e) 17 02 04\* glass, plastic and wood containing or contaminated with dangerous substances.
  - (f) 19 12 06\* wood containing dangerous substances.
  - (g) 19 12 07 wood other than that mentioned in 19 12 06.
  - (h) 20 01 37\* wood containing dangerous substances.
  - (i) 20 01 38 wood other than that mentioned in 20 01 37.

**Q.31. WHERE SHOULD BURDEN OF PROOF/RESPONSIBILITY LIE (PRODUCER, WASTE MANAGEMENT COMPANY)?**

6. UKELA notes that paragraph 83 of the Call for Evidence identifies that a number of substances (namely liquids, certain hazardous substances and tyres) have already been banned from landfill. These bans are enforced through a combination of the measures listed in paragraph 84 of the Call for Evidence. UKELA suggests that, for the sake of consistency and legal certainty, the burden of proof and responsibility for any restrictions on wood waste should be in line with the burden of proof and responsibility for existing bans, i.e. a combination of the measures set out in paragraph 84 of the Call for Evidence.

**Q.34. GIVEN THE EVIDENCE AVAILABLE DO YOU THINK THERE IS A CASE FOR FURTHER GOVERNMENT ACTION ON WASTE WOOD? IF YES, SHOULD THIS BE A) RESTRICTION B) OTHER MEASURES C) COMBINATION OF A RESTRICTION AND OTHER MEASURES.**

7. UKELA believes that, on balance, if the Government wishes to achieve a particular environmental outcome in driving wood waste out of landfill, then a restriction would be the
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appropriate means to achieve this, as it would provide legal certainty and drive innovation and investment in infrastructure for dealing with waste wood. Although the available evidence may point to a gradual decline in the amount of wood waste sent to landfill in recent years, there is always the possibility that in the absence of a restriction, this trend might not continue. There is also the risk of market failure if the market is left to find its own level.

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