



Waste Management in England – House of Commons Environment, Food and Rural Affairs Committee Inquiry (announced 31 March 2014)

Written evidence submitted by the UK Environmental Law Association

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 or formulation of Environmental Law in the UK and the European Union. It 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 evidence has been prepared with the help of the Waste Working Party.
3. UKELA makes the following comments on the issues on which the Committee has invited written evidence.

The ability of existing recycling policy measures to ensure that England reaches the EU target of recycling 50% of household waste by 2020

4. UKELA is not in a position to comment on the practical effectiveness of existing recycling policy measures, but notes that, according to Defra's own statistics¹, in 2012/2013 England's household waste recycling rate increased by only 0.2%, to 43.2%. If existing recycling policy measures can only maintain (rather than accelerate) that rate of increase, then the 2020 target will clearly not be met.

¹ Statistics on waste managed by local authorities in England in 2012/13 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255610/Statistics_Notice1.pdf)

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Whether England's national recycling targets should be higher than those stipulated by the EU; and the pros and cons of compulsory household waste recycling

5. There is nothing in law to prevent national recycling targets in England being higher than required under the revised EU Waste Framework Directive, although at a time when Local Authorities' budgets are stretched, UKELA suggests that it might not be regarded as a prudent use of resources.
6. UKELA is not in a position to comment on the pros and cons of compulsory household waste recycling, save to note that it might be very difficult to enforce any legislation. UKELA notes in particular the difficulties local authorities have faced in enforcing the existing Section 46 of the Environmental Protection Act 1990, which allows waste collection authorities to require occupiers of premises to present their household waste for collection in a specified way. This issue was investigated in 2013 by the Joint Committee on the Draft Deregulation Bill in the context of the proposal to replace the criminal offence with a civil penalty in England².

The role of businesses and households in municipal waste recycling and recovery

7. This is not a matter upon which UKELA is able to provide evidence.

Whether England has the right balance of waste treatment technologies between anaerobic digestion, incineration with energy recovery and gasification to produce fuel/heat/power

8. This is not a matter upon which UKELA is able to provide evidence.

² See pages 55-56 of the Committee's Report: HL Paper 101, HC 925

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The extent to which increasing the capacity of thermal treatment plants could impact England's municipal waste recycling rates

9. This is not a matter upon which UKELA is able to provide evidence.

Whether anaerobic digestion is the best option available to deal with food and other biowaste

10. This is not a matter upon which UKELA is able to provide evidence.

Whether the Government's Anaerobic Digestion Strategy and Action Plan has substantially increased the use of AD

11. This is not a matter upon which UKELA is able to provide evidence.

The feasibility of the introduction of a ban on landfill and/or incineration in England

12. UKELA believes that a ban on landfill and/or incineration in England would be legally possible, but suggests that a proper impact assessment be carried out, as there are a number of potentially far-reaching consequences:

- a. All environmental permits for existing landfill sites and incineration plants would need to be varied, which would impose a significant burden on the Environment Agency.
- b. The effect on existing incineration plants, particularly those procured under PPP/PFI arrangements, needs to be considered. Some incineration plants require feedstock that is produced to a particular specification and is supplied under a contract or contracts which require the supplier to supply feedstock meeting that specification. An incineration ban could, as a minimum, require technical changes to be made to incineration plants to enable them to process feedstock of a

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different composition to that which they were originally designed to process and, in more serious cases, could result in the closure of plants. In any event, the introduction of a ban would be likely to trigger any “change of law” provisions in the relevant contracts. In PPP/PFI contracts the risk of change of law invariably lies with the public sector, so an incineration ban could result in considerable costs to any waste disposal authorities that have procured incineration plants under PPP/PFI arrangements.

- c. The introduction of landfill and/or incineration bans would be likely to result in an increase in fly-tipping.
- d. It is also possible that even greater quantities of waste than currently would be exported to continental European countries such as Germany and the Netherlands in the form of refuse-derived fuel for incineration in those countries.

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