

Withdrawal from the EU
Implications for regulated businesses: a waste industry
practitioner's perspective

Clare Deanesly

Solicitor

18 November 2015

“ What have the Romans done for us?”

(Monty Python and the Holy Grail)



EU Waste Legislation

- IPPC Directive (now Industrials Emissions Directive)
- Landfill Directive
- Waste Framework Directive and Revised Waste Framework Directive
- Producer Responsibility Directives:
 - WEEE
 - Packaging
 - Batteries

Impact of EU Waste Legislation

- HM Government Red Tape Challenge
 - ❖ implementation of Hazardous Waste elements of RWFD
 - ❖ repeal of English Site Waste Management Regulations
 - ❖ WEEE and waste transfer note reforms (SMEs)

- Waste law and policy has been driven by the EU:
 - ❖ diversion of waste from landfill
 - ❖ increased municipal recycling rates
 - ❖ the Waste Hierarchy

Balance of Competencies

- Balance of Competencies Review Report: Environment and Climate Change: HM Government February 2014.

“an open minded debate around EU competence on the environment...within the context of finding an appropriate balance and exploiting synergies between the need for economic growth and a sustainable approach to the future”

“ tensions around environmental standards and competitiveness”

- BUT:

“ a more nuanced picture....some sectors welcome a degree of cross EU Regulation”

Key impacts of EU Competence

- “ EU targets on waste and on climate change were seen by many as providing greater certainty for investors and an important spur for growth”
- “EU competence has increased environmental standards”
- “EU legislation could lead to disproportionate costs...against environmental benefit”
- “regulatory burdens ..for energy intensive industry and SMEs”
- “main framework of EU [environmental] legislation established... focus on improving existing laws”

The Waste Industry's View

- EU Waste legislation has significantly changed the UK's approach to waste management, reducing landfill and increasing recycling
- EU competence has increased the level of ambition of [UK] environmental legislation
- CIWM: success of EU international waste shipments/end of waste criteria
- European Waste Catalogue a burden on SMEs (complexity of transfer notes)
- But...not a lot of sympathy for SMEs from waste industry

The Waste Industry's View

- Waste Policy should be set at EU level
- EU legislation provides a level playing field for producer responsibility
- Minority view that waste targets not a transnational issue
- Impact of EU legislation on land use planning
- CIWM wanted:
 - ❖ EU wide standards for SRF and RDF
 - ❖ more emphasis on resource conservation and waste prevention
 - ❖ consistent interpretations, definitions, data and reporting across MS

The European Environment State and Outlook Report 3 March 2015 (SOER 2015)

- 7th EU Action Plan goals cannot be achieved with current ambition/targets
- Resource efficiency and the Circular Economy a top priority
- Total waste generation still high could be improved with implementation of waste prevention programmes.
- Waste prevention and action across the full product lifecycle
- Significant opportunities across MS for increased recycling
- Overcapacity in some EU incineration

Leaving the EU: Research Paper 13/42 (House of Commons Library 1 July 2013)

- “ £22billion in low or no cost savings to UK businesses from more efficient use of materials and avoiding waste”
- “ waste policy... a key competitiveness issue.. [and]...a security issue”
- May not be substantial change in UK approach BUT questions over longer term management of UK’s waste.
- “ could undermine economically efficient decision making in the sector due to the long term planning needed for waste infrastructure development”

Environmental Services Association view

- An EU exit “ would leave a huge void for the industry as it would be unclear to what degree we would retain any elements of the European path towards the higher levels of environmental sustainability [and] billions of pounds of fresh investment in green jobs and growth [could dry] up overnight.”

The Deregulation Drive

- EC Better Regulation Initiative: May 2015
 - ❖ New Regulatory Scrutiny Board
 - ❖ Fitness check of environmental rules
- BIS New Cutting Red Tape programme: July 2015
- ESA response:
 - ❖ Wider remit of review focussing on activities of regulators welcomed;
 - ❖ Need for a clear stable, precise and predictable legal framework;
 - ❖ Cutting red tape not a priority/concentrate on enforcement.

Environmental Audit Committee Consultation: October 2015

- Objectives of EU environmental policies and extent to which beneficial in addressing “ the most important” UK environmental issues
 - ❖ Advantages/disadvantages;
 - ❖ Flexible frameworks to allow both cross border and national approaches
 - ❖ Success of implementation of EU environmental policy
- Implications of EU environmental policy on UK environmental protection
 - ❖ Specific character of UK
 - ❖ Work still to be done
 - ❖ Impact on business

Whither the Circular Economy?

- Defra Paper: Resource Management : a Catalyst for Growth and Productivity (February 2015)
 - ❖ Policy uncertainty due to withdrawal of EC Circular Economy package;
 - ❖ “ a balanced package of proposals ...ambition...evidence based”
 - ❖ More data required/awaited on recovered material
 - ❖ Insufficient UK domestic reprocessing capacity/need to export
 - ❖ Better regulation to progress Waste prevention (potential savings of £139m pa)
 - ❖ Opportunities in remanufacturing
 - ❖ Job creation through the Circular Economy
- EC Public Consultation on the Circular Economy (May 2015)
 - ❖ “ a more ambitious circular economy strategy”
 - ❖ “ a revised legislative programme on waste”

Whither the Circular Economy

- Defra UK Response to EC Public Consultation (October 2015):
 - ❖ Endorses use of voluntary measures
 - ❖ Opposed to prescriptive approaches that do not allow MS scope to take account of national circumstances
 - ❖ Draw on principles of Better Regulation
 - ❖ More sustainable, resource efficient design/innovation
- Resource Security
 - ❖ Will this be as effective at national as opposed to EU level?

Resource Security

- Will this be as effective at national as opposed to EU level?
 - ❖ Global consumption of resources and materials
 - ❖ How best to compete against China?
 - ❖ How bring about behavioural change?

“Credibility...hangs in the balance”

- MRW 4 November 2015: Roy Hathaway
 - ❖ Light touch voluntary approach versus regulation;
 - ❖ Not all agree that better regulation and environmental progress compatible;
 - ❖ No concrete action to develop sustainable markets for secondary raw materials
 - ❖ Need for “demand side” measures;
 - ❖ EC say prescriptive EU action “not effective or proportionate”.

Trade Associations' letter to EC

- “ we do not see delivery of the CE coming purely from the operation of the market”
- “ an exception to the Commission’s general rule [of lighter touch regulation]... because to deliver the strong environmental and economic benefits of a circular economy requires a long term regulatory framework and market interventions that will stabilise and enhance the viability of increasing recycling”

Possible impacts of withdrawal on waste and resource sector

- Lack of investment until legislative and policy uncertainties resolved
- Who will drive policy and set targets?
- Do we have the infrastructure to deal with all waste nationally?
- Impact of devolved government on waste laws and policies
- Would we re think concept of waste definitions/end of life criteria etc?
- Possible review of this in CE Package?

Conclusions??

- EU policy and legislation has driven and improved waste and resource management in the UK
- This has been supported in the main by the waste industry
- Not clear to what extent UK would be as effective in driving policy if we go it alone
- Resource Security and Waste Prevention will be increasingly important
- The industry has lived in “ interesting times “ for many years, but just as it looked like there was a bit more clarity and certainty.....