

Response by Caerphilly County Borough Council to Welsh Government Consultation on Draft Statutory Guidance on the Separate Collection of Waste Paper, Metal, Plastic and Glass

1. Caerphilly County Borough – Area, Characteristics & Recycling Performance

Wales has a diverse mix of Local Authorities in terms of their population, socio-economic conditions and land status. Caerphilly County Borough is a “Valleys” Authority characterised by densely populated settlements with a significant amount of terraced housing (often with very small or no garden space at all) interspersed with large areas of countryside. The Authority has developed a service that meets the needs of all stakeholders and is crucially achieving the key objective of continuous increases in the amount of materials recycled and diverted from landfill. In this regard, the Authority has tried a range of collection systems from kerbside sort through to the various comingled options. The present basket of collection services delivered by the Authority enables statutory recycling targets to be met and at the same time satisfies residents and other stakeholders.

Caerphilly County Borough Council, has, in recent years, been consistently in the top 5 performing Authorities in Wales in terms of recycling/composting and currently has a public satisfaction level of 95% for its recycling service.

2. Legal Aspects of the Guidance and the Welsh Government Application of the Directive

(i) Proportionality

The concept of proportionality requires that measures adopted by Member states do not exceed the limits of what is appropriate and necessary to achieve the legitimate objectives of the Directive in question. Furthermore, when there is a choice between several appropriate measures, it should be the least onerous measure that prevails and the disadvantages caused must not be disproportionate to the aims being pursued.

The Committee of Ministers to member states have produced a Code of Practice for Good Administration. This document outlines principles and rules which should be applied by Public Authorities (such as the Welsh Government) in order to achieve good administration. In particular, Article 5 (principals of proportionality) states that:

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- Public Authorities shall impose measures affecting the rights or interests of private persons only where necessary and to the extent required to achieve the aim pursued.
- When exercising their discretion, Public Authorities shall maintain a proper balance between any adverse effects which their decision has on the rights or interests of private persons and the purpose they pursue. Any measures taken shall not be excessive.

The Welsh Government has maintained that the aim of separate collection is high-quality recycling. Caerphilly County Borough Council maintains that the introduction of a separate collection system is not necessary if the aim of high quality recycling can be achieved just as well with a form of co-mingled collection of dry recyclables followed by effective MRF separation – this would then be in line with Article II and the principles of the waste hierarchy. Caerphilly County Borough Council maintains that its current collection system is meeting EU goals and regards the radical change proposed by the draft WG guidance rather onerous when you consider the principle of proportionality. In addition to the relevant Code of Practice outlined above, the Treaty on the functioning of the European Union (TFEU) provisions also include the principle of proportionality. Caerphilly County Borough Council contends that the draft WG guidance is at odds with the principal of proportionality which flows through everything that the European Union aims to achieve.

(ii) The Local Government (Wales) Measure 2009

The Local Government (Wales) Measure (LGWM) 2009 provides that:-

- (i) A Welsh Improvement Authority must make arrangements to secure continuous improvement in the exercise of its functions.
- (ii) In discharging its continuous improvement duty, an Authority must have regard in particular to the need to improve the exercise of its functions in terms of:-
 - Strategic effectiveness, if it exercises its functions in a way which is reasonable, likely to lead to the achievements of, or assist in achieving, any of its strategic objectives.
 - Service Quality, if there is an improvement in the quality of its service.
 - Fairness if
 - Disadvantages faced by particular groups in accessing, or taking full advantage of services are reduced or
 - Social well-being is improved as a result of the provision of services or the way in which functions are otherwise exercised.

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- Sustainability, if services are provided or functions are otherwise exercised in a way, which contributes towards the achievement of sustainable development in the Authority's area.
- Efficiency, if there is an improvement in the efficiency with which resources are used in the provision of services or in the way in which functions are otherwise exercised, and
- Innovation, if the way in which services are provided or functions are otherwise exercised is altered in a manner which is reasonably likely to lead to any outcome described above.

In addition, for the purposes of discharging the above duties and setting its future improvement objectives, an Authority must consult representatives who live, pay rates, use or are likely to use services and have an interest in the Authority's area. It is also important to note that sustainability is only one of the LGWM considerations and although there is an additional duty for WG to promote or improve the environmental well being of Wales in accordance with section 60 of the Government of Wales Act 2006, Caerphilly County Borough Council would argue that prescription over collection methods prevents compliance with the LGWM and may not achieve the aims of section 60 of the Government in Wales Act as it may alienate the public whose backing is essential if recycling services are to work effectively.

The draft WG guidance explicitly states that "the definition of practicability does not allow for householder or business preferences about collection methods" Caerphilly County Borough Council would argue that this is completely at odds with the LGWN and the whole concept of citizen centred services. Central prescription over collection methods and the underlying message in the draft guidance that citizen views do not matter is also completely at odds with recent Ministerial statements such as those provided by the Environment Minister in a recent interview with Materials Recycling Week (MRW) where the Minister stated that, when discussing waste collections,

"that's really a matter for local authorities and I would hesitate for a very, very long time before I started walking into town halls up and down Wales telling them how they manage their waste collections".

In addition, the Minister stated, in the same interview

"my approach is to emphasise simplicity and ease of working. I'm not obsessed with process, I'm not obsessed with delivering new fangled ways of working, I'm obsessed with what helps people to recycle".

As can be seen from the above text there is clear disconnect between the duties placed on the Council by the LGWM, the prescription over waste collection services and clear disregard for citizens in the draft guidance and the public messages being provided by the Minister. In conclusion, it is the Council's view that the WG prescription over recyclable service delivery is fettering the Council in complying with its LGWM duties and delivering services efficiently and effectively in accordance with the views of its electorate.

3. Economic Issues

As stated above, Caerphilly County Borough Council is delivering its recycling services in a way that is:-

- Popular with the electorate;
- Performing extremely well in terms of target achievement;
- And is benchmarked favourably in cost terms.

With this in mind, it is difficult to comprehend why the Welsh Government would wish to prescribe a service change. The Local Government Minister has recently told Local Authorities to prepare for a revenue support grant cut of up to 4.5% next year. In Caerphilly terms this would equate to circa £30 million and is likely to result in decimation of some services with resultant job losses. It is therefore beyond comprehension that the Welsh Government could produce guidance which suggests that an Authority like Caerphilly should replace a perfectly good recyclable collection service with a centrally prescribed alternative where the cost of change would not be insignificant.

Even if the cost of change was supported by Welsh Government funding it would still be viewed as a blatant waste of public money by citizens at a time when many other services and/or facilities that they currently enjoy are potentially ceasing or being drastically downsized.

4. Practical Issues

There is the potential for a very long debate over a number of practical aspects of recycling. A number of these debating points are outlined below:-

- (i) Definitions - There is confusion and contradiction prevailing in the waste industry in relation to definitions and "buzz" words such "up-cycling", "down-cycling", "closed – loop recycling", "high quality recycling", etc and how they impact on the waste hierarchy. In particular recycling is one of 3 available sub-categories of recovery

(preparing for re-use, recycling and other recovery) – Both recovery and recycling may use the same process but the end result provides the distinction between the 2 (i.e. reprocessing waste materials into products, materials or substances whether for the original or other purpose constitutes recycling). The phrase “high quality recycling” only occurs in one place in rWFD, paragraph 2 of Article 11(1). However, it is not defined in the rWFD and for the remainder of the Articles the rWFD refers simply to “recycling”. This lack of definition and clarity over “high quality recycling” combined with the fact that Article 4(2) makes the waste hierarchy subservient to the “best overall environmental outcome” which means taking into account (amongst other things) technical feasibility, health, economic and social impacts leads the Council to believe that there are 2 crucial factors to be considered in delivery of its collection services - ie: are materials being recycled and citizen acceptability (which has economic, health and social impacts).

- (ii) End destinations – There is considerable debate amongst waste professionals over the use of end destinations data in determining what is the best system for collecting recyclables, particularly where there are examples of co-mingled collections out performing source segregated collections for certain material types (e.g.: plastics separated into different types at co-mingled MRF v mixed plastic sold from a source segregated collection). There is also evidence to suggest that the amount sent to closed – loop recycling by some co-mingled authorities is higher than some kerbside sort authorities.
- (iii) The Local Economy – There is often a disconnect between the quest for closed loop recycling v local economic development. There are live examples in S.E.Wales where the WG preference for closed loop paper recycling could result in paper being transported huge distances to mills in Kent or Deeside when there is a local loft insulation manufacture within the region. This consequently has local economic implications.

The purpose of highlighting the 3 items above, is to demonstrate that there are grey areas in terms of practicality and local circumstances and local decisions not central prescription are best placed to deal with these issues.

Conclusion

Caerphilly County Borough is an area in the heart of Industrial South Wales. It is heavily urbanised and has a significant amount of deprivation in its communities. The introduction of recycling was challenging, but gradually the Council has developed its services and reconfigured them to achieve the right balance of high level performance and citizen, workforce and end market user satisfaction. This has been no mean feat and has allowed the Council to reap the rewards of public engagement in recycling. Presently, the service is user friendly and delivered to all its residents in rural and urban areas. The comprehensive suite of services is more popular than ever before and is sustainable in terms of finance (with SWMG support) and frontline delivery.

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Benchmarking clearly demonstrates the progress made in public recycling services. Indeed it is significant to note that Caerphilly continues to be the top performing “Valleys” Authority and moreover compares well with the other Welsh Authorities (being in the top 5 performers in recent years). Caerphilly has continued to achieve the progressive Welsh Government statutory targets whilst maintaining compliance with relevant Environmental and Health and Safety legislation. Being forced to reconfigure services at this juncture is likely to be a retrograde step and there is major concern that introducing a new collection regime will do irreparable damage to the recycling cause in terms of performance against targets. Moreover, it would be perceived by the electorate as a blatant waste of public money to change a service that is performing well and is extremely popular with its users (particularly at a time of unprecedented Local Government austerity).

The Council acknowledges that there is always room for improvement (particularly concentrating on targeting the minority of persistent non participants). However, the Authority is concerned, particularly given the genuine positive feedback from its residents, that any change in dynamic will have a detrimental effect on the service and in turn the reputation of the Council and Welsh Government as resource focussed and efficient organisations. Where central prescription prevails then the Welsh Government should provide assurance to Local Authorities that if their recycling performance reduces and they fail to achieve the statutory targets then there will be no fines levied.

It is also the Council’s contention that central prescription over collection methods disregards the Council’s wider duties set out in the Local Government (Wales) Measure 2009. Furthermore, it ought not to be automatically assumed that the separate collection of waste promotes or improves the environmental well-being of Wales as set out in section 60 of the Government of Wales Act 2006. On the contrary, the restrictive and prescriptive enforcement of separate collection by Welsh Government may be acting contrary to this power and/or the intentions of section 60. Given the duties placed on them by the Local Government (Wales) measure to consult residents, etc the local agenda and social impact considerations should not be overridden by sustainability considerations. It is therefore crucial that the views of the residents of the County Borough on service delivery are taken into account and that central prescription must never take priority over the ability to make local service choices.

It is also worth noting that Caerphilly has recently come out top of the Welsh Government’s “National Survey of Wales” which further demonstrates the satisfaction with the citizen focused services delivered by the Council. Consequently, given all of the issues outlined in this consultation response, the Council is firmly of the opinion that Local Service choice (as long as it achieves the agreed outcomes ie: the WG recycling targets) should be allowed to prevail and that Local Authorities should not be constrained by central prescription over service delivery.