

Judicial Review of Waste Regulations

Purpose of Report

The purpose of the report is to update the Board on developments relating to the judicial review of DEFRA in *UK Recyclate vs DEFRA*. A further paper will be tabled at the meeting.

Summary

The LGA is an interested party in the judicial review *UK Recyclate vs DEFRA*. The LGA recently wrote to its member councils about a recent article in the Municipal Journal which focused on the judicial review and also gave a short factual update on the judicial review. This correspondence and update is included in this report.

Recommendation

It is recommended that the Board comment on the update and the accompanying paper (to be tabled on the day of the meeting).

Action

Officers will take forward based on comments from the Board.

Contact officer: Abigail Burridge
Position: Senior Adviser
Phone no: 0207 664 3245
E-mail: Abigail.burridge@local.gov.uk

Judicial Review of Waste Regulations

Background

1. The following information was included in a factual update sent to chief executives and waste portfolio holders in early September.
2. In summer 2011, a consortium of recycling businesses led by Recyclate UK, a business that trades recyclable materials, brought a claim against DEFRA and Welsh Ministers on the grounds that they had failed to adequately transpose the EU Waste Framework Directive into English and Welsh law. The LGA, also representing the WLGA, and the Environmental Services Association (ESA) were named as Interested Parties in the case. The ESA is a membership organisation for waste management companies that supports and promotes the waste and resource management industry.
3. The LGA became an interested party in the proceedings because the outcome of the case will have implications for all local waste collection authorities.
4. The EU legislation states that separate collection must take place where it is practicable. The original legal dispute turned on whether co-mingled collection could be regarded as a form of separate collection. The original English and Welsh regulations explicitly said that it was. The claimants disputed that this was a correct interpretation of the Directive.
5. The initial hearing was set for December 2011 but was adjourned by the Court because DEFRA decided to revise its regulations. Revised regulations were issued for consultation in February, laid in July, and come into force in October. The revised regulations say that from 2015, separate collection of recyclable materials must be undertaken where it is necessary to facilitate or improve recovery of the materials; and where it is technically, economically and environmentally practicable. The revised regulations are intended to allow for co-mingled collection where separate collection is not necessary to aid recovery of materials, or while necessary, is not practicable.
6. This reflects in the June 2012 EU guidance on the Waste Framework Directive. The guidance states that *"the aim of separate collection is high-quality recycling, 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"*.
7. The claimants have not accepted that the revised Waste Regulations adequately transpose the Directive and have notified the court of their intention to proceed with a challenge to both the 2011 and 2012 regulations. No hearing has taken place, pending discussions between lawyers for the two sides about the procedural implications of the claimants' wish to challenge both sets of regulations. The LGA will be considering the proposed timetable for a hearing and the grounds of the claimants in determining our next steps.
8. A further paper will be tabled at the meeting to provide information on future milestones and key decision points.

Municipal Journal Article

9. The claimant's lawyers placed an article about the case in the Municipal Journal on 23 August. A copy of the article is in **Appendix 4a**. The article contained inaccuracies and was misleading. As such, the LGA wrote to chief executives and waste portfolio holders in England and Wales. Copies of the letters are in **Appendix 4b**.

Financial Implications

10. There are no financial implications associated with this paper.