

Waste strategy thrown into confusion

Hilary Harrison says local authorities need new regulations to end the state of limbo which exists in recycling



The past decade has seen the UK undergo a transformation in the way it views waste. While 10 to 15 years ago, we threw everything in the same bin without a second thought, we are now – correctly – encouraged and, indeed, often required, to recycle our refuse.

Yet, while the improvement in our recycling rates has been nothing short of extraordinary, it remains the case that things could be better.

However, a recent judicial review concluded that the Waste (England and Wales) Regulations 2011 failed to comply with European law and, as a result, local authorities have been left in limbo while the Department for Environment, Food and Rural Affairs (DEFRA) and Welsh ministers look to draw up new regulations which do comply.

Our client, UK Recyclate, sought the judicial review because it was concerned about the quality of recycling. About half of councils in England and Wales collect recyclable materials through co-mingling, where waste streams – such as paper, glass, plastic and metal – are collected together and then separated later.

But this approach does not guarantee high-quality waste which can then be recycled, and it does not greatly improve the UK's true rates of recycling.

Given that situation, it is vital DEFRA and the Welsh ministers act swiftly to ensure amended regulations comply with Europe-wide rules on recycling, to give councils clarity over how they should act. UK Recyclate represents some 80% of

the UK's reprocessing industry, which handles both domestic and commercial recyclable waste. Clearly, it is in a good position to judge the quality of the waste that is collected for recycling.

After UK Recyclate sought the judicial review in December 2011, the defendant – DEFRA and the Welsh ministers – conceded that current regulations did not comply with the European Directive. They then subsequently announced a consultation and plans to amend the English and Welsh regulations which

The view is that co-mingling does not achieve the high-quality recycling needed

bind local authorities.

However, in April, during the consultation process, we were forced to challenge the amended regulations because we believed they still failed to comply with European law. At the time of writing, UK Recyclate has just received further-amended regulations. DEFRA and the Welsh ministers have been put on notice that the further-amended regulations are still not compliant.

The upshot of this is that local authorities have been left in a tricky situation. As mentioned earlier, about half the coun-

cils in England and Wales currently use co-mingling, rather than asking people to separate their own waste or separating waste at the kerbside. The majority of those who use co-mingling are in England, and it is they which face the largest potential financial liabilities.

Clearly, it is likely that in order to comply with European law, DEFRA and the Welsh ministers will need to amend regulations in a way that makes continued co-mingling impossible for hundreds of local authorities. That could mean huge financial implications for many councils as they make the changes needed to switch to the separate collection of the different waste streams.

Nevertheless, it is important to stress that this is not unnecessary meddling by a trade consortium. The view of many in the recycling industry, of which UK Recyclate is the main representative body, is that co-mingling does not achieve the high-quality recycling that is needed for the UK to both meet strict targets and ensure that recyclable items can be reused or reprocessed and not lost to landfill.

Unfortunately, because the Government and Welsh ministers are struggling to amend their regulations to comply, local authorities are currently in a state of limbo. They need to begin putting in place procedures to comply with the requirement to introduce separate collections by 2015, but it is uncertain – and, indeed, unlikely – that they will be able to continue to opt for co-mingling.

Furthermore, those local authorities

which do decide to continue collecting streams of recyclable waste together, rather than separately, open themselves up to further challenge by another judicial review.

Those councils currently tied into waste collection and recycling contracts, whether co-mingling agreements or otherwise, are being forced to watch nervously from the sidelines as DEFRA and Welsh ministers work to comply with European standards.

Worse, however, is that those local authorities without contracts in place are unable to specify the service needed for fear of being locked into recycling practices which contravene the European Directive.

Bidders from the waste collection industry may be keen to accept broad brush mechanisms to permit changes in the service once a contract is in place.

All of this is impacting on the UK's reputation as a place which takes recycling seriously. If we expect our citizens to be diligent in separating waste then authorities should be equally rigorous in ensuring regulations are compliant with the EU.

Local authorities need clarity to operate within the law and to recycle effectively. We look forward to hearing back from DEFRA and the Welsh ministers to resolve the situation in a way that suits all parties. ■

Hilary Harrison is a partner at Anthony Collins Solicitors