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Chapter 1

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Policy framework

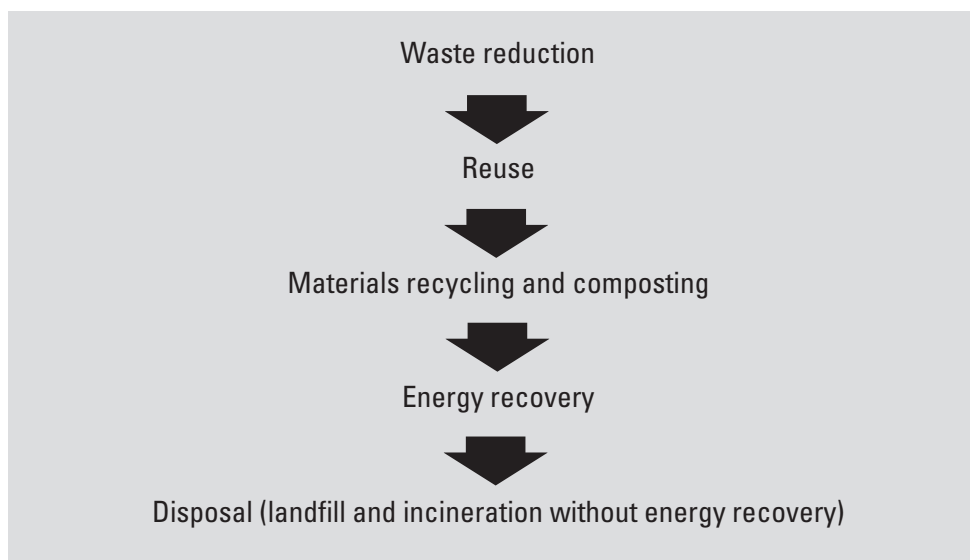
Principles of environmental and waste legislation

Most of our waste and environmental legislation has its source in Europe. All the major changes to the law described in this Report – such as the Landfill Regulations, Hazardous Waste Regulations, producer responsibility schemes and Landfill Allowances and Trading Scheme – have been introduced in order to implement EU directives.

The key principles of EU waste policy were taking shape as early as 1974 when the first Waste Framework Directive was published. General environmental principles which influence waste directives are:

- the Polluter Pays Principle – which underlies, for example, producer responsibility legislation;
- the Precautionary Principle which states that where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. This is illustrated by the Waste Incineration Directive, which sets extremely stringent emission limits; and
- the Proximity Principle (waste to be disposed of at the nearest suitable facility).

The 1989 Community Waste Strategy gave legal expression to the concept of the **waste hierarchy**. The UK's revised National Waste Strategy sets it out as follows:



The waste hierarchy

The waste diversion targets in the Landfill Directive (see Chapter 6, Local authorities and municipal waste) illustrate how legislation is used to move waste up the hierarchy, encouraging waste producers to reuse, recover and recycle their waste where practicable, rather than consign it to landfill. Producer responsibility directives such as the Waste Electrical and Electronic Equipment Directive also attempt to increase recycling and recovery.

Of course, the primary aim of waste legislation is to ensure that waste management activities are carried out in a way which does not harm the environment. The objectives of the **Waste Framework Directive 75/442/EEC**, amended by **91/156/EEC** include:

‘ensuring that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and in particular without

- i) risk to water, soil, plants or animals
- ii) causing nuisance through noise or odours
- iii) adversely affecting the countryside or places of special interest.’

When courts are called on to make judgements on the interpretation of waste law, such as in the recent Van de Walle case (see Chapter 2), they will refer back to these basic objectives of waste regulation.

UK policy

“The overall objective of Government policy on waste, as set out in the strategy for sustainable development, is to protect human health and the environment by producing less waste and by using it as a resource wherever possible...the Government aims to break the link between economic growth and the environmental impact of waste. This means a step-change in the way waste is handled and significant new investment in waste management facilities.” (Planning Policy Statement (PPS) 10 *Planning for Sustainable Waste Management*, July 2005, available on www.odpm.gov.uk.)

This quote shows how UK policy directly reflects the EU objectives summarized above. As required by the Waste Framework Directive, the UK Government has produced a national waste plan, *Waste Strategy 2000*. As the title might suggest, this is already out of date and the strategy has been built upon by subsequent documents and reports. It has most recently been amended by a July 2005 document, *Changes to Waste Management Decision Making Principles in Waste Strategy 2000* (available on www.defra.gov.uk), and supplemented by PPS 10. These policy documents, and the decision making principles set out to achieve their goals, are discussed further in the section on planning in Chapter 6, Local authorities and municipal waste.

Waste reduction is undeniably at the top of the hierarchy but it cannot really be legislated for, and the Government is only able to offer exhortation and information to waste producers (for example, via Envirowise). When it comes to legislation and detailed policy measures, the Government’s objective has really been to shift waste from landfill to recycling and recovery.

Achieving the objectives

Legislation

Most directives are implemented through national legislation, and in the UK there has recently been a plethora of new statutory instruments implementing the Landfill Directive, Hazardous Waste Directive, End of Life Vehicles Directive and so on. Most of these sets of regulations transpose the specific targets and requirements of directives, such as the waste diversion targets and Waste Acceptance Criteria in the Landfill Directive or the national targets for recycling waste electrical and electronic equipment.

However, Governments are free to adopt other approaches towards achieving their environmental objectives.

Market mechanisms

The UK has traditionally tended to leave more to the private sector and free market than have other Member States. So, for example, the Government is looking to the private waste companies to remedy the shortfall in treatment capacity for hazardous waste (see Chapter 4, Landfill regulations and their impact). Economic instruments such as the landfill tax, aggregates levy and Packaging Waste Recovery Notes can be used to divert waste from landfill.

One of the chief barriers to increasing recycling has always been the lack of markets, or fluctuating markets, for recycled materials. The Government has sponsored WRAP (the Waste and Resources Action Programme) to create markets and generally encourage voluntary efforts towards waste reduction, recycling and recovery. This can be seen as a necessary corrective to traditional market mechanisms, making them take account of environmental costs and benefits. The House of Commons Environment, Food and Rural Affairs Committee commented that ‘It is hard to overstate the importance of markets for recycled goods and materials. A step change is needed to ensure that waste is valued for the resources it contains’. (Eighth Report of 2002-2003, *The Future of Waste Management*, available at www.parliament.uk/efracom). However, some take a more sceptical view such as well-known waste lawyer Richard Hawkins who sees little point in “using construction rubbish to produce building blocks as expensive as veined Carrera marble” and is unhappy that “even if the recycled materials cannot find a market, their production must be subsidized by the tax and/or rate payer until (hopefully) markets become established”. (*The Practical Guide to Waste Management Law*, by R G P Hawkins and H S Shaw, Thomas Telford, 2004.)

Success or otherwise?

However worthwhile the environmental objectives of waste policy, little will be achieved if proposed EU legislation is poorly thought out, ambiguously drafted and fails to take into account the specific situations of stakeholders within Member States. (Such allegations have been laid against aspects of the Landfill Directive.) Once a directive has been adopted, confusion will result if the new legislation is not communicated clearly to those affected, and subsequently backed up with adequate funding and firm enforcement. The Commons Environment, Food and Rural Affairs Committee, in its eighth report cited above, concluded that DEFRA

‘does not seem to have a real sense of where it wants to go, and the Agency still appears to be under-funded for its regulatory role. Once again, we question the Department’s ability to negotiate and implement European Union laws to the best advantage of the United Kingdom’.

The subsequent chapters report both achievements and failures in the Government’s efforts to move the UK towards sustainable waste management. Recycling of municipal waste has increased and targets have been fully or nearly met; industry has taken steps to reduce the generation of hazardous waste; local authorities are putting into practice the environmentally sound principles of integrated waste management. However, at the same time the Government has been the focus of sustained criticism from both waste producers and waste managers due to the lack of resolve, delays and uncertainty involved in implementing far reaching EU measures such as the landfill Waste Acceptance Criteria and WEEE Directive. The new requirements have produced a dramatic upheaval in the waste management scene, challenging Government, industry and regulators alike, and it will be some years before the overall balance of costs and benefits to society becomes apparent.