



Department of the
Environment

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CLIMATE AND WASTE DIVISION

**CONSULTATION ON MEETING
EU LANDFILL DIVERSION
TARGETS**

CLOSING DATE – 8 OCTOBER 2010

Consultation on meeting EU Landfill Diversion Targets

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1. Introduction

Scope and Purpose of the Consultation

1.1 The Landfill Directive (1999/31/EC) set challenging targets for Member States to reduce the amount of biodegradable municipal waste sent to landfill – the “landfill diversion targets”. Following discussions with the European Commission, it has been agreed that the UK’s approach to meeting these targets should be changed. This consultation addresses the implications of changing the UK’s approach to meeting these landfill diversion targets in relation to Northern Ireland (NI). It is intended to be the first of two consultations, with specific proposals being presented in the second consultation. At this stage, the Department of the Environment (the “Department”) is seeking the views of stakeholders on the proposed approach in a number of areas to inform the further development of these proposals.

1.2 The consultation addresses the changes necessary to enable the UK to report to the European Commission on a revised approach to the landfill diversion targets. This includes setting out the new interpretation of the definition of municipal waste; revisions to the 1995 baseline and targets and the reporting and monitoring obligations necessary to enable robust reporting against the targets to the European Commission. It also seeks views on the future of the Northern Ireland Landfill Allowance Scheme (NILAS), in addressing both the District Council and private sector elements of municipal waste, and providing the necessary confidence that Northern Ireland meets its targets. Related to this a separate consultation on future landfill restrictions has also been published today. (www.doeni.gov.uk/waste)

How to Respond

1.3 **The closing date for responses is 8 October 2010.** Please send your responses marked “Consultation on Meeting EU Landfill Diversion Targets” to:

Catherine Torrens (until 31 July) / Paul Burns (from 1 August)

Climate and Waste Division

Central Policy and Resources Group

Department of the Environment

Calvert House

23 Castle Place

Belfast

BT1 1FY

E-mail to: catherine.torrens@doeni.gov.uk / paul.burns@doeni.gov.uk

Tel: (028) 9025 4759

Fax: (028) 9025 4732

Textphone: (028) 9054 0642

1.4 Further copies of the consultation paper may be obtained from the Department's website www.doeni.gov.uk/waste or from the contact above. This consultation document can be made available in large print, disc, Braille or audiocassette and may also be made available in minority languages for those not proficient in English.

1.5 In your response, please explain who you are and, where relevant, who you represent and provide your name and address.

Publication of Responses

1.6 In line with the Department's policy of openness, at the end of the consultation period copies of the responses received may be made publicly available, upon request, from the Department (see 1.3 above for contact details). The information they contain may also be published in a summary of responses.

1.7 The Department will publish a summary of responses received after the consultation process has ended. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response please read the paragraphs below on the confidentiality of consultations which provide guidance on the legal position concerning any information provided by you in response to this consultation.

1.8 If you do not consent to this, you must clearly request that your response is treated confidentially. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. You should also be aware that there may be circumstances in which the Department will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004¹.

Freedom of Information Act 2000

1.9 The Freedom of Information Act gives the public a right of access to any information held by a public authority, in this case, the Department. This right of access to information includes information provided in response to a consultation exercise. The Department cannot automatically consider as confidential information supplied to it in the course of a consultation exercise. However, the Department does have a responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

1.10 This means that information provided by you in response to this consultation will not be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act² provides that:

¹ S.I. 2004/3391

² <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>

- a. The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- b. The Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature;
- c. Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified by the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office at:³

Comments or Complaints

1.11 Comments or Complaints about the consultation process (as opposed to comments about the issue which is the subject of the consultation) should be addressed to:

Mrs C Fisher
Department of the Environment
Calvert House
23 Castle Place
BELFAST
BT1 1FY

E-mail: Catherine.fisher@doeni.gov.uk

Tel: (028) 9025 4883
Fax: (028) 9025 4732

Outcome of Consultation

1.12 The Department will consider all of the responses to the Stage One consultation. Stage Two of the consultation exercise will look at the impact of any changes agreed and the future of the Northern Ireland Landfill Allowance Scheme (NILAS).

Equality Issues

1.13 Under section 75 of the Northern Ireland Act 1998⁴, public authorities have a statutory duty to promote equality of opportunity. We have completed an equality screening of the proposals and have concluded that they do not impact on equality of opportunity on any of the groups specified in section 75. A summary of the screening paper is attached at Annex A and the full screening paper will be posted on the DOE Equality Unit Website.⁵

³ See <http://www.ico.gov.uk> for details

⁴ 1998 c. 47

⁵ http://www.doeni.gov.uk/index/information/equality_unit.htm

1.14 The Equality Commission will receive copies of this consultation document as part of the consultation exercise. We will take into account any comments that the Commission might have.

Human Rights and Equality Impacts

1.15 The Human Rights Act 1998⁶ implements the European Convention on Human Rights. The 1998 Act makes it unlawful for any public authority to act in a way that is incompatible with these rights. We believe that the proposals in this consultation document are compatible with the Human Rights Act, but would welcome any views that you might have.

1.16 The Human Rights Commission will receive copies of the consultation document as part of this consultation. We will take into account any comments that the Commission might have.

Regulatory Impact Assessment

1.17 There are no additional costs or monetary benefits associated with this proposed definitional change as no policy changes are proposed. As such, a Regulatory Impact Assessment is not considered necessary.

Rural Proofing

1.18. It is Government policy that all Government Departments and Agencies intending to introduce a new policy should subject that policy to rural proofing. Annex B sets out the likely effects of the proposals.

⁶ 1998 c. 42

2. Executive Summary

2.1 The Landfill Directive (1999/31/EC) set challenging targets for Member States to reduce the amount of biodegradable municipal waste sent to landfill – the “landfill diversion targets”. Following discussions with the European Commission, it has been agreed that the UK’s approach to meeting these targets should be changed. This consultation addresses the implications of changing the UK’s approach to meeting these landfill diversion targets. It is intended to be the first of two consultations, with specific proposals being presented in the second consultation. At this stage, the Department of the Environment (the “Department”) is seeking the views of stakeholders on the proposed approach in a number of areas to inform the further development of these proposals.

2.2 The revised approach to municipal waste is based on waste classified using the List of Wastes Decision⁷ (or the ‘European Waste Catalogue’). Chapter 20 of this catalogue can broadly be considered to equate to municipal waste. It is intended to also include parts of Chapter 19 (waste from treatment facilities) and Chapter 15 (packaging waste). This approach has been agreed with the European Commission and will bring the UK approach closer to that used in other Member States. It means that a much larger proportion of commercial and industrial waste is included within the definition, which is consistent with the increased focus the Department wants to place on this waste stream; and to bring greater convergence between the drivers to manage household and commercial waste further up the waste hierarchy so that the environmental impacts of waste are addressed regardless of its source.

2.3 This change will not mean that any additional waste is sent to landfill and is simply a change to the way municipal waste is classified. In addition it is not anticipated that the revised approach will, in itself, alter the current responsibilities and arrangements for managing this waste. Whereas previously municipal waste only applied to waste managed by District Councils it will now extend to cover waste managed by private sector waste management companies. District Council obligations to manage waste will not be amended to cover the ‘new’ waste being included in the scope of municipal waste for the first time. They will continue to manage household waste, and commercial and industrial waste when requested. The vast majority of commercial and industrial is managed by the private sector and we do not expect this to change. It is not the intention, through the reclassification of municipal waste, to significantly change the existing management arrangements.

2.4 However, changing the way municipal waste is counted means that the baseline upon which the landfill diversion targets were set has to be revised, and therefore also the targets for the UK. Revisions to these targets have been agreed with the European Commission, which broadly double the existing targets. A provisional assessment by DEFRA and the Devolved Administrations concludes that the UK’s progress towards meeting the new targets is similar to the previous approach; that is, there is confidence that the

⁷ Commission Decision 2000/532/EC, as amended, most recently by Council Decision 2001/573/EC

2010 target will be met but further progress is needed to be sure of meeting the 2013 and 2020 targets.

2.5 The requirements set in the Landfill Directive are at a UK level and the revised definition and targets will affect all four administrations of the UK. However, the overall UK target is apportioned to each of the four administrations. This consultation will address the specific implications for NI in meeting and reporting on its share of the UK target. In developing the revised UK approach, and this consultation, NI has worked closely with DEFRA and the devolved administrations in Wales and Scotland. As we take forward work following this consultation we will continue to work closely with the other administrations, including considering the advantages of a consistent approach across the UK.

2.6 To ensure that the Department can report robust, credible data to the European Commission on the revised amount of biodegradable municipal waste being sent to landfill in NI it is necessary to review the reporting and monitoring obligations currently in place, and if necessary, consider additional measures. A number of possible approaches have been considered in discussion with DEFRA and the other devolved administrations, and stakeholder views are sought on the approaches outlined.

2.7 The revision to the UK's approach provides an opportunity to review the range of policies in place to ensure that NI meets the targets set. To meet the previous approach to the targets the Northern Ireland Landfill Allowance Scheme (NILAS) was introduced in NI in 2005. It is not proposed to extend the coverage of NILAS to cover the revised totality of municipal waste; it will continue to apply to waste collected by District Councils. However, the revision to the targets provides the opportunity to review the ongoing effectiveness of this scheme, particularly against the changed context of other existing, and potentially new, policies in place to divert biodegradable waste from landfill since NILAS was introduced.

2.8 The Department is of the view that NI, based on existing policies, most notably planned increases to landfill tax and NILAS, is currently on track to meeting the landfill diversion target for 2013. This provisional assessment indicates that no additional measures, above and beyond those already planned, are likely to be necessary to meet the target. However, the target for 2020 is considerably more challenging and further work is necessary to confirm the approach going forward. In addition, separate to this consultation, measures to transpose the revised Waste Framework Directive are being developed and the possibility of introducing landfill restrictions for certain waste types is also being consulted upon which could significantly impact on the amount of biodegradable waste being sent to landfill. The *Consultation on the introduction of restrictions on the landfilling of certain wastes* is available on the Department website. (www.doeni.gov.uk/waste) In this context stakeholder views are sought on the most effective combination of policies DOE should pursue, that address both the District Councils and private sector elements of municipal waste, to provide the necessary confidence that NI meets its targets. This will shape further work the Department, DEFRA and the other devolved administrations intend to conduct to assess the impact of existing policies to divert biodegradable waste from landfill ahead of the planned second consultation.

2.9 The revised approach to the landfill diversion targets also requires that some changes are made to the relevant legislation to reflect this, the Waste and Emissions Trading Act 2003, the Landfill Allowance Scheme (Northern Ireland) Regulations 2004, and the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (“Targets Regulations”). The key changes necessary are outlined in this consultation and stakeholder views are sought on the proposed approach. The Department’s intention is to present specific proposals for one set of consolidated legislative changes in the planned second stage consultation.

Consultation Questions

Reporting and Monitoring Obligations (paragraphs 4.14 to 4.24)

Q.1: Which of the possible approaches to reporting on the amount of Biodegradable Municipal Waste (BMW) sent to landfill should the Department develop further? Is it right to favour measuring a landfill target at the point of landfill, provided a robust and credible method can be determined?

Q.2: Are there alternative approaches the Department should be considering?

Policies to divert biodegradable waste from landfill - Section 5

Q.3: Do you consider that NILAS is an effective policy to assist NI in meeting its share of the UK landfill diversion target in:

- a) 2013
- b) 2020

Please provide evidence to support your views if possible. In particular it would be useful to know the role NILAS plays in future planning by District Councils/waste management groups to divert waste from landfill.

Q.4: What policy instruments should the Department consider in its assessment of those necessary to meet the landfill diversion targets in 2013 and 2020? Please provide evidence to support your response if possible.

Q.5: Are there other policy options specifically to divert biodegradable municipal waste from landfill that the Department should be considering?

Amending the existing legislation - Section 6

Q.6: Do you agree with the proposal to create the concept of "Collected Waste" as a means of NILAS continuing in its current form as a policy addressing waste collected by District Councils.

Q.7: Is "Collected Waste" the best term, or is there a better alternative?

Q.8: Do you agree that allocations of landfill allowances to District Councils should be retained as currently allocated for each NILAS scheme year?

Q.9: Do you think targets for BMW to landfill should be set in non-target years, and if so, on what basis?

3. Background and context

3.1 The Landfill Directive (1999/31/EC) sets challenging targets for Member States to reduce the amount of biodegradable municipal waste sent to landfill. This was in line with its overall objective to prevent or reduce as far as possible the negative effects of landfilling on the environment, including reducing the production of methane gas from landfills, as well as any resultant risk to human health. The Directive includes a definition of municipal waste (Article 2) as

waste from households, as well as other waste which, because of its nature or composition, is similar to waste from households.

It defines 'biodegradable waste' as

any waste that is capable of undergoing anaerobic or aerobic decomposition, such as food and garden waste, and paper and paperboard.

3.2 These definitions are used as the basis for the landfill diversion targets included in Article 5(2) of the Directive. The UK's targets are to reduce the amount of biodegradable municipal waste (BMW) sent to landfill to:

- 75% of the total amount produced in 1995 by 2010
- 50% of the total amount produced in 1995 by 2013
- 35% of the total amount produced in 1995 by 2020

Member States may be subject to penalties from the European Commission if they fail to meet their targets.

3.3 These targets were transposed into UK legislation with the Waste and Emissions Trading Act 2003 ("WET Act"). This legislation also provided the legal basis for landfill allowance schemes in each of the four administrations in the UK. These schemes were established as the primary means for ensuring that the UK as a whole met the Directive targets.

3.4 The definition of municipal waste set out in the Directive was included in the WET Act. However, in further developing the landfill allowance schemes it was felt necessary to provide greater clarity to the definition of municipal waste. In doing so municipal waste in Northern Ireland was in practice defined as waste that is under the possession or control of District Councils, and the landfill allowance schemes were established to apply to District Councils only.

3.5 The landfill allowance schemes have proven effective in influencing District Councils to take action to divert biodegradable waste from landfill. This has been through a combination of waste prevention measures, increasing recycling and composting, and investing in waste treatment facilities. Since the introduction of the Northern Ireland Landfill Allowance Scheme (NILAS) in 2005/06 in Northern Ireland, and in combination with other policies, the recycling rate for waste collected by District Councils has risen from 23% to 31.6% in 2008/09. In addition the amount of biodegradable waste sent to landfill by District Councils has fallen by 17.5% over the same period.

3.6 The Northern Ireland Environment Agency published its report on the 2008/09 scheme year in December 2009⁸. This showed that 475k tonnes of biodegradable waste was landfilled by District Councils in Northern Ireland. This is a similar figure to the scheme maximum for 2010, and only 150k tonnes more than the 2013 scheme maximum. This would suggest that the scheme, combined with other measures, has been an effective driver on local authority behaviour to divert biodegradable waste from landfill to date.

3.7 However, discussions with the European Commission over the last year have led the Department, DEFRA and the other devolved administrations to agree that the UK's existing approach is focused too narrowly on waste collected by District Councils; that this approach focuses on too small a subset of the totality of waste produced and that the environmental objectives of the Directive to reduce the negative effects of landfilling would be better addressed by a broader definition. This is consistent with the increased focus we want to place on commercial and industrial waste; and to bring greater convergence between the management of household and commercial waste so that the environmental impacts of waste are addressed regardless of its source.

3.8 This consultation addresses the changes necessary to enable the UK to report to the European Commission on a revised approach to the landfill diversion targets included within the Directive. This includes setting out the new interpretation of the definition; revisions to the 1995 baseline and targets; and the reporting and monitoring obligations necessary to enable robust reporting against the targets to the European Commission. It also highlights the potential implications for domestic policy instruments to divert biodegradable waste from landfill. However, further evidence gathering and analysis is necessary before firm proposals can be made on the instruments considered necessary to ensure that the targets are met.

3.9 The requirements set in the Landfill Directive are at a UK level and the new interpretation of the definition and revised targets will affect all four administrations of the UK. However, the overall UK target is apportioned to each of the four administrations. This consultation will address the reporting and monitoring obligations for NI, and the policy instruments necessary for NI to meet its share of the UK target. In developing the revised UK approach, and this consultation, the Department has worked closely with DEFRA and the administrations in Wales and Scotland. This close liaison will continue as we take forward work following this consultation.

⁸ http://www.ni-environment.gov.uk/nilas_report_2008-09.pdf

4. The UK's revised approach to reporting against the Landfill Diversion targets.

4.1 The UK Government is changing the approach the UK takes to calculating the targets on reducing the amount of biodegradable municipal waste sent to landfill included in the Landfill Directive. The revised approach will include much more waste than currently and will bring the UK approach more closely into line with the approach adopted by a number of other Member States.

4.2 This change will not mean that any additional waste is sent to landfill and is simply a change to the way waste is classified. However, changing the way municipal waste is counted will mean changing the baseline on which the landfill diversion targets were set and thus the targets for the UK.

The revised approach to the definition of biodegradable municipal waste

4.3 The new interpretation of municipal waste is based on the classification of waste using the List of Wastes Decision⁹ (or the 'European Waste Catalogue' as it will be referred to in this consultation). Chapter 20 of this catalogue can broadly be considered to equate to municipal waste – the Chapter is headed *“Municipal Wastes (household waste and similar commercial, industrial and institutional wastes) including separately collected fractions”*.

4.4 In discussions with the European Commission they have made clear that this is their preferred approach to classifying municipal waste. It is understood that this approach is used in a number of other Member States.

4.5 After considering what an approach based on Chapter 20 of the European Waste Catalogue (EWC) would mean, including reviewing recent data, it has been decided to broaden the definition of municipal waste further. It is proposed to also include some waste that is coded under Chapter 19 within the definition. Chapter 19 covers waste from waste management facilities, and for example, we consider biodegradable waste classified under sub-section 12 landfilled following mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) should be included. By including waste coded under this section we can ensure that municipal waste landfilled following some forms of treatment process, such as Mechanical Biological Treatment, but which contains biodegradable content, is captured.

4.6 In addition, it is our view that some waste coded under Chapter 15 should also be included. This chapter covers waste packaging. Sub section 15 01 specifically covers packaging (including separately collected municipal packaging waste). Therefore, it is appropriate to include some waste coded under this sub section in the definition of municipal waste. Our view is that waste coded under 15 01 01 to 15 01 09 (excluding 15 01 03 and 15 01 04) should be included.

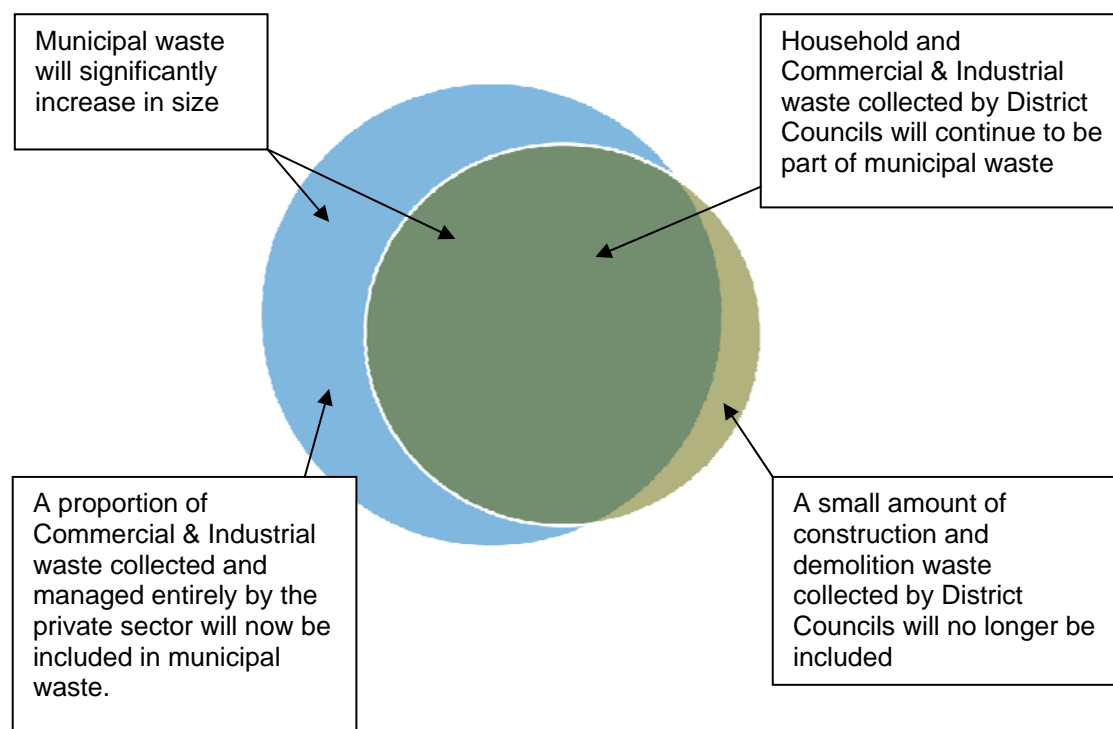
⁹ Commission Decision 2000/532/EC, as amended, most recently by Council Decision 2001/573/EC

4.7 It is worth noting that this approach does not include construction and demolition waste, which would be recorded under a different chapter of the EWC, within municipal waste.

Table 1 – Revised approach to municipal waste using European Waste Catalogue codes

Revised approach to municipal waste		
Codes included		Comments
Chapter 20	All codes	Chapter is titled “municipal waste” and is the basis for the revised approach to municipal waste following discussions with the European Commission
Chapter 19		
	19 12	This sub-section covers wastes from the mechanical treatment of waste. An analysis of the data shows an increasing amount of waste being classified as chapter 19 in recent years and almost exclusively 19 12 as more pre-treatment/sorting of waste is carried out and more treatment infrastructure is built. This corresponds with a largely equivalent fall in waste being coded under Chapter 20 over the same time period. Therefore, the assumption in including this code is that material being landfilled under this code is substantially municipal in origin.
	19 05 & 19 06	These two sub-sections cover the aerobic and anaerobic treatment of waste. Historically only very small amounts of waste have been coded against these sub-sections. However, going forward it is considered that these codes may become increasingly relevant. The intention is to include these codes on the assumption that the bio-waste being sent for these treatments will be predominantly, if not entirely, municipal in origin.
Chapter 15		
	15 01 01/02 & 15 01 05 to 15 01 09	This sub-section concerns packaging waste, including separately collected municipal packaging waste. The codes within 15 01 for specific packaging materials waste that is considered to be municipal have been included. These are paper, cardboard, plastic, glass, textile, composite and mixed.

Figure 1 – Revised approach to municipal waste



4.8 After consideration of the possible alternatives the Department along with DEFRA and the other devolved administrations considers that the approach outlined above provides an interpretation of municipal waste that is consistent with the definition set out in the Landfill Directive. This has been confirmed in discussions with the European Commission. It is also consistent with our aim of reducing the damaging emissions of methane from landfilling biodegradable waste regardless of the source of the waste.

Impact on the baseline and the landfill diversion targets for the UK

4.9 Revising the interpretation of municipal waste as outlined above will mean that the amount of waste classified as municipal waste will increase significantly. As a result it has been agreed with the European Commission that the UK's targets to reduce the amount of biodegradable municipal waste (BMW) sent to landfill need to be revised. The targets in the Directive are based on proportions of a baseline 1995 figure of BMW produced. This figure needs to be revised and this will directly impact on the tonnage targets that the UK is required to meet in the target years of 2010/2013/2020.

4.10 However, the historical data set back to 1995 is not complete for the new approach to interpreting municipal waste. A waste survey was conducted in Scotland around this time which has resulted in Scotland having relevant data for this period which they have been able to use. However, for Northern Ireland, England and Wales some modelling of the available data to estimate a 1995 baseline of municipal waste arisings for the relevant EWC codes has been required.

4.11 For household waste there is a robust, historic data set via WasteDataFlow and its predecessor surveys. The available data for commercial and industrial waste is not as comprehensive. Surveys were conducted in particular years, 1998/9 and 2002/03, and Waste Statistics Regulation returns were made in 2004 and 2006 to the European Commission. This available data for commercial and industrial waste has been analysed to identify the proportion of total Commercial & Industrial (C&I) waste that should be apportioned to the relevant EWC codes for municipal waste under the revised approach. In each year for which an assessment of the tonnage of C&I waste that is municipal is available this has been added to known tonnage of household waste to produce a total figure for municipal waste arisings under the revised approach. These data points have been used to calculate a regression to estimate a 1995 baseline of biodegradable municipal waste arisings for Northern Ireland, England and Wales. This has then been combined with the data for Scotland to produce a UK figure.

4.12 In discussing any potential change to the UK's approach with the European Commission the incompleteness of the available data stretching back to 1995 was highlighted at an early stage. The European Commission have known and accepted that the limitations in the available data would require a degree of modelling to be carried out to produce a revised baseline for the landfill diversion targets. Our modelling work has been shared with the Commission, and they have confirmed the acceptability of the approach we have used and the modelled baseline.

4.13 As a result the changes shown in the table below have been made to the UK targets, and to those of each administration within the UK, to reduce BMW to landfill. The previous targets have approximately doubled as a result.

Table 2 – Previous and New Landfill Diversion Targets

Landfill Diversion Targets ('000 tonnes)			
	2010	2013	2020
Previous Targets			
England	11,200	7,460	5,220
Scotland	1,320	880	620
Wales	710	470	330
Northern Ireland	470	320	220
UK	13,700	9,130	6,390
New Targets			
England	21,773	14,515	10,161
Scotland	2,697	1,798	1,258
Wales	1,378	919	643
Northern Ireland	919	612	429
UK	26,766	17,844	12,491

Impact on reporting obligations in Northern Ireland

4.14 The preceding sections have concerned changing the approach to meeting the landfill diversion targets at a UK level. The following sections concern NI only. In addition, this section focuses on what is required to be able to report on the landfill diversion targets, on the basis of the revised approach to municipal waste, to the European Commission. Although clearly linked under the previous approach it is proposed that this is now decoupled from the reporting regime in place for NILAS.

4.15 To ensure that robust, credible data can be reported to the European Commission on the amount of BMW being sent to landfill in NI we need to review the reporting obligations currently in place, and if necessary, consider additional measures. A number of possible approaches have been considered. They are presented in outline below and require further thinking and development. Monitoring and reporting may require a mix of options, or variations on the ideas presented here.

4.16 The existing approach to reporting for NILAS is a 'mass balance' approach based on data reported by District Councils through WasteDataFlow. This approach is based on an assumed biodegradable content of municipal waste collected, with deductions being made for biodegradable waste diverted via alternative management methods prior to landfill, to leave a calculated figure for BMW landfilled. This approach could be extended, to a greater or lesser extent, to the new coverage of municipal waste. This option would require additional monitoring and reporting on municipal waste managed by the private sector, and an addition to the existing administrative system to manage these returns. The extent of additional effort would depend on the nature of the option chosen and the use that could be made of existing systems, such as the waste input returns made by waste operators to the NIEA. Issues that would need resolving include who in the waste management chain to place this additional reporting obligation upon (for example waste producers or waste management facilities); the level of detail required in reports; and the most appropriate form of compliance monitoring. Further work is needed to consider how this approach would work in practice and the additional reporting and monitoring obligations considered necessary.

4.17 Alternatively BMW to landfill could be measured at the point of landfill. Given that we are concerned with a target at the point of landfill there is a certain attractiveness to the logic of such an approach. Under the NILAS Regulations landfill operators are already required to keep records and report to NIEA on municipal waste landfilled. This covers waste sent to a landfill by a District Council, and must be coded using the six digit European Waste Catalogue.

4.18 More generally the European Waste Catalogue is used to code waste for Waste Transfer Notes and returns made to the NIEA on the waste received at their site by waste operators under pollution, prevention and control conditions (PPC) Returns for most waste facilities, including landfill,

are made quarterly. Therefore, use of the codes is well established within the waste management sector. This would include reporting to NIEA from landfill operators on the amount of waste received at landfill from the EWC codes included in the new definition of municipal waste.

4.19 Therefore, there is an existing reporting mechanism in place on waste sent to landfill, coded using the EWC. However, to enable reporting against the targets we must be able to identify from these returns the amount of BMW landfilled. In order to do this the tonnage of waste landfilled against the specific EWC codes that are included within municipal waste must be identified. Furthermore, we must know the biodegradable content of each of these types of waste. As the vast majority of relevant EWC codes are material specific these are relatively straightforward, the material landfilled will either be biodegradable or not. However, there are a small number of 'mixed' codes under which a disproportionately large amount of waste is landfilled. Assessment of the biodegradable content of the waste landfilled under these codes will be crucial to understanding the amount of BMW landfilled.

4.20 This assessment of the biodegradable content could be done by the Department and NIEA through sample monitoring of material landfilled under the mixed codes. Alternatives to this could be that an obligation is placed on the landfill operator to make an assessment of the biodegradable content of mixed waste they receive, perhaps through inspection of loads received or some form of sample monitoring. Or the obligation could be extended to non-landfill operators such as operators of Material Recycling Facilities, Mechanical Biological Treatment facilities, or transfer stations to assess and report on the amount of BMW they send to landfill.

4.21 The Department provisionally favours measuring BMW to landfill based on returns made by landfill operators, as coded by European Waste Catalogue code, with an assessment of the biodegradable content made by the Department. However, this is a new use for this existing data and is dependent on further work to confirm that this will produce robust and credible data, in particular to assess the biodegradable content of mixed waste.

4.22 Therefore, the approach that the Department provisionally favours to data reporting on the amount of BMW sent to landfill means that we do not envisage this placing any additional burden on top of existing reporting obligations, since the information is already included in returns made to NIEA.

4.23 An alternative approach may be to consider some form of transitional, or composite, reporting. This would take as its basis the existing reporting process for calculating biodegradable municipal waste sent to landfill via District Councils using WasteDataFlow (WDF) and the mass balance approach. The 'new' biodegradable municipal waste sent to landfill by the private sector would be calculated by an additional separate reporting system. This would most obviously be to use landfill operator return data if possible.

4.24 Regardless of changes to the reporting approach for the landfill diversion targets we intend to retain WasteDataFlow. This is a valuable source of data on waste managed by District Councils. Not only is the data a very useful source of information in itself but the data would serve other, defined policy needs. For example WDF is the officially designated source of data for reporting against the District Council and waste management group

key performance indicators linked to the Northern Ireland Waste Management Strategy 2006-2010: Towards Resource Management. Furthermore, we anticipate WDF being used as a source of data in relation to the target in the revised Waste Framework Directive to recycle 50% of household waste, and possibly waste from other origins similar to household waste. Discussions are ongoing with DEFRA and the other devolved administrations on the methodologies used for calculating the target.

Q.1: Which of the possible approaches to reporting on the amount of BMW sent to landfill should the Department develop further? Is it right to favour measuring a landfill target at the point of landfill, provided a robust and credible method can be determined?

Q.2: Are there alternative approaches that the Department should be considering?

Impact on monitoring obligations in Northern Ireland

4.25 The amount of biodegradable municipal waste sent to landfill needs to be effectively monitored to ensure that the UK is able to provide the Commission with robust evidence of its compliance with the requirements of the Landfill Directive.

4.26 The existing legislation, section 10 of the WET Act, requires a monitoring authority to be appointed to, amongst other things, monitor how much biodegradable municipal waste is sent to landfill by District Councils as an aspect of the monitoring of the provisions relating to landfill allowances. In NI the current monitoring authority is the NI Environment Agency. However, in revising the interpretation of the definition of municipal waste it is necessary to consider what changes are needed to the current monitoring arrangements.

4.27 The Department proposes that for NI, NIEA should continue to be the monitoring authority. The Agency already carries out the role, and in addition has a role in monitoring data reported at landfill sites that should be classified against the EWC codes. Therefore, we are proposing to amend the responsibilities of the NIEA to reflect the revised approach to reporting against the landfill diversion targets.

5. Northern Ireland's approach to meeting the landfill diversion targets

5.1 The change to the UK's approach provides an opportunity to review the range of policies in place to ensure that the landfill diversion targets are met. This section of the consultation focuses on the policy measures in place for NI to meet its share of the UK target. The Administrations in England, Wales and Scotland are considering the need to review the policies in place in their respective territories separately.

Approach to date in Northern Ireland

5.2 To meet the previous approach to the targets NILAS was introduced in Northern Ireland in 2005. This scheme caps the total amount of biodegradable municipal waste that can be landfilled in any given scheme year, with allowances allocated to individual District Councils. The level of allowances allocated each year are set to reduce progressively at the rate necessary to meet their share of the previous UK target.

5.3 NILAS has been an effective policy instrument influencing District Councils to take action to divert biodegradable waste from landfill. This has been through a combination of waste prevention measures, increasing recycling and composting, and investing in waste treatment facilities. Since the introduction of NILAS in 2005/06 in NI, and in combination with other policies, the recycling rate for waste collected by District Councils has risen from 23.0% to 31.6% in 2008/09. In addition the amount of biodegradable waste sent to landfill by District Councils has fallen by 17.5% over the same period.

5.4 NILAS has incentivised Northern Ireland's District Councils and Waste Management Groups to invest in waste treatment infrastructure to secure capacity and avoid the penalties arising from a failure to divert the required amount of biodegradable waste in the target years. To support the diversion of BMW from landfill in Northern Ireland the Executive has provided financial support to the Waste Management Groups which are procuring waste treatment infrastructure through SWIF (Strategic Waste Infrastructure Fund). This support covers an element of the capital investment and is intended to mitigate any impact on ratepayers. Up to £200m of capital support has been made available to the three Waste Management Groups to ensure sufficient capacity will be available in Northern Ireland. It remains the case that investment to divert waste from landfill is likely to be required to meet the landfill directive targets, irrespective of whether this is driven by NILAS or not.

Assessment of progress against revised targets.

5.5 The Northern Ireland Environment Agency report on the 2008/09 NILAS scheme year showed that Northern Ireland landfilled a similar amount in that year when compared to the previous 2010 target. A provisional assessment of NI's position against the new targets, using the new interpretation of municipal waste, has been carried out. This suggests that Northern Ireland will meet the 2010 target and that we are also currently on track to meet the 2013 target. The 2020 target is more challenging and a continued effort will be required in order to be sure of meeting it.

5.6 Clearly the approach to reporting taken has the capacity to influence the exact calculation of BMW landfilled and therefore this assessment is only provisional at the moment. As outlined in the section on reporting (see paragraph 4.14 to 4.24) this assessment is based upon the approach that the Department provisionally favours using returns made by landfill operators of waste landfilled by EWC code. From this data the total amount of biodegradable municipal waste sent to landfill has been calculated. For most of the relevant EWC codes it is straightforward to determine the biodegradable content as they are material specific. However, for a small number of codes assumptions must be made about the biodegradable content. This is of most relevance for EWC code 20 03 01 “*mixed municipal waste*” under which a significant proportion of the total municipal tonnage is coded. In the absence of detailed compositional analysis of mixed municipal (i.e. household or household-like waste) waste at landfill the existing assumption about the biodegradable content of mixed waste collected by local authorities, 64%, has been used.

5.7 This is considered the best available proxy. However, it relies on some large assumptions: that the biodegradable content of the ‘new’ waste being included in municipal waste is similar to that already included; and that the biodegradability of waste landfilled is the same as waste collected meaning that biodegradable and non-biodegradable mixed municipal waste is diverted from landfill at similar rates to leave the overall biodegradable mix at the same proportion. These assumptions are not considered implausible but are clearly substantial. There is some evidence to support these assumptions. Analysis of the data reported under NILAS suggests that the biodegradable content of waste landfilled is similar to the biodegradable content of waste arisings. In addition, analysis of the biodegradable content of mixed commercial and industrial waste landfilled in Wales conducted in 2007 indicated that the biodegradable content was similar to that of municipal waste arisings¹⁰. Given the importance of these assumptions to the proposed approach of determining the amount of BMW landfilled further work is necessary to improve our understanding of the biodegradable content of mixed municipal waste at landfill.

5.8 The following table presents our assessment of BMW landfilled in 2009, under the revised approach to municipal waste and based on our provisional approach to reporting, for three assumptions for the biodegradable content of “*mixed municipal waste*” (EWC Code 20 03 01) as landfilled. To reflect the uncertainties in calculating the BMW values a range of +/- 10% has been applied to these estimates. The new 2013 target for Northern Ireland has been included for reference.

¹⁰ <http://www.environment-agency.gov.uk/research/library/publications/33977.aspx>

Table 3

BMW to landfill in 2009 for three assumptions as to the biodegradable content of mixed municipal waste (EWC 20 03 01) recorded at landfill				
% Assumption	59%	64%	69%	New Target
BMW to landfill (tonnes) Range (+/- 10%)	466,978 – 570,750	506,069 – 618,529	544,999 – 666,109	612,000 (2013)

5.9 Using the mid-point of the central assumption (562,299 tonnes) demonstrates that Northern Ireland landfilled less than the new 2010 target (919,000 tonnes) in 2009. Early indications are that we are on track to meet the new 2013 target (612,000 tonnes), but that a substantial figure of a further 133,299 tonnes of BMW would have to be diverted from landfill to meet the new 2020 target (429,000 tonnes). However, as shown by the table this position could change significantly depending on the accuracy of the assumption of the biodegradable content of EWC code 200301 at landfill.

5.10 Therefore, this assessment must be treated with a great deal of caution. This is not only due to the significant assumption made about biodegradable content but also the fact that the data is a snapshot of the picture in 2009. This does not take into account any change in waste arisings between 2009 and the target years, and in relation to this it is worth noting that arisings in 2009 were likely to be affected by the economic downturn.

Overview of policies to divert biodegradable waste from landfill

5.11 In order to avoid missing the targets and the possibility of significant financial penalties from the European Commission the Department must have confidence that NI will divert sufficient BMW from landfill in order to meet its share of the UK target. The policies in place must provide this confidence. Based on our provisional assessment of the current position, NI is on track to meet the 2013 landfill diversion target based on existing policies; however the Department would wish to undertake further assessment in relation to NI's likelihood to meet the 2020 target.

5.12 Subject to the further assessment outlined above the revision to the targets provides the opportunity to review the ongoing effectiveness of existing policies, in particular NILAS. In addition, separate to this consultation the possibility of landfill restrictions for certain waste types are being consulted upon and later this year measures to transpose the revised Waste Framework Directive will be consulted upon which could significantly impact on the amount of biodegradable waste being sent to landfill.

5.13 In this context stakeholder views are sought on the most effective combination of policies that address both the District Council and private sector elements of municipal waste, to provide the necessary confidence that NI meets its targets. The relevant policies and the potential issues are set out below and we would appreciate stakeholder views, supported by evidence where possible, on the policy instruments we should consider going forward.

This will shape further work DEFRA, in consultation with the Devolved Administrations, intends to conduct to assess the impact of existing policies to divert biodegradable waste from landfill ahead of the planned second consultation. Therefore, this consultation is not proposing specific changes to existing policies, or proposing additional policies. In considering the range of options the Department has worked closely with colleagues in the other Administrations. In assessing the responses to this consultation we will continue to work with colleagues in both DEFRA and the other Devolved Administrations to consider the advantages of a consistent approach across the UK.

Existing policies to divert biodegradable waste from landfill

Northern Ireland Landfill Allowance Scheme

5.14 The primary tool to ensure NI meets its share of the UK target under the previous interpretation of municipal waste is the Northern Ireland Landfill Allowance Scheme (NILAS). As noted earlier this appears to have been effective in driving action by District Councils to divert biodegradable waste from landfill. However, the direct link between the NILAS allocations and the landfill diversion targets has been broken by the revised approach to municipal waste. This was a key reason for setting up the scheme and means that the landfill allowance scheme, as currently formulated, will only address approximately half of the new municipal waste stream. This means that we need to review the relevance and usefulness of NILAS for the future.

5.15 It may be that in order to meet the landfill diversion targets it is necessary to retain NILAS as a specific driver on District Councils/waste management groups. By continuing the scheme it would provide reassurance that the proportion of BMW waste managed by District Councils would be diverted from landfill at the necessary rate to meet the larger targets.

5.16 However, as NILAS will no longer be a tool to specifically address the whole of the new interpretation of municipal waste it could be argued that retaining it to do part of the task, particularly if other tools are available, is not a sensible approach. It places an additional burden on District Councils, which is not placed on the private sector.

5.17 As a result of changing the UK's approach to the landfill diversion targets there are changes to the legislation that underpins NILAS to maintain the scheme that are considered necessary (See Section 6). Therefore, there is no 'do nothing' option. The revised approach to municipal waste provides an opportunity to review the effectiveness of the policy and its ongoing value to meet the new targets. Given NILAS' specific role in meeting the landfill diversion targets the Department's appraisal will focus on the scheme's ongoing role in ensuring that the 2013 and 2020 targets are met. This will inform the second stage consultation. To assist in framing that appraisal we are seeking views, and evidence, on the role NILAS has played in diverting biodegradable waste from landfill, and will continue to play through to 2020 from stakeholders.

Other Existing Policies

5.18 Since NILAS was introduced in 2005/06 there have been significant developments in fiscal instruments and other incentives to divert waste from landfill, most notably landfill tax. In 2005/06 the tax was set at £18, and rising at £3 per year. Subsequent to that the escalator was increased to £8 per year, with the tax reaching £40 in 09/10, and set to rise by £8 per year to £72 in 2013/14. Landfill tax is becoming an ever more significant driver on District Council plans to divert waste from landfill, and as the level of tax continues to rise this trend can be anticipated to become more pronounced. In addition it is a policy driver that also impacts on private sector waste management so will address both the existing, and 'new', components of municipal waste.

5.19 In addition there are a range of existing, and future, initiatives on waste prevention, re-use and recycling, either driven by the desire to avoid landfill tax or for other reasons that will all contribute to diverting biodegradable waste from landfill. For example the Courtauld Commitment, and the "Love Food, Hate Waste" campaign will influence the amount of biodegradable waste produced. The Department, through WRAP has provided financial support, through the Organics Capital Grant Programme, for commercial composting operations to increase available capacity. This will enable 60,000 tonnes of organic waste from households across Northern Ireland to be composted to PAS 100 standard each year. At the other end of the scale WRAP are continuing to encourage the take up of home composting. The Department recently launched the £3.13m Rethink Waste Fund which will provide funding for initiatives which will boost waste recycling and re-use including the recycling and composting of biodegradable waste streams.

5.20 The Department of Enterprise, Trade and Investment (DETI) will shortly be publishing a new Strategic Energy Framework which is likely to set a renewable electricity target of 40% and a renewable heat target of 10% by 2020. DETI considers that bioenergy could make a contribution to these targets. On behalf of the Bioenergy Inter Departmental Group, DETI has consulted on a draft Bioenergy Action Plan for Northern Ireland 2009 – 2014. The document identified the potential for the sustainable development of bioenergy in Northern Ireland including the appropriate use of wastes for energy production. Northern Ireland's three waste management group's waste plans allow for energy recovery facilities as part of the overall residual waste treatment. Electricity generated from waste is incentivised under the Northern Ireland Renewables Obligation (NIRO). Generating stations utilising energy from waste can apply for Renewables Obligation Certificates (ROCs) which have a tradable value and provide an important income stream. In addition, the draft plan also recognised Municipal Solid Waste (MSW), commercial and industrial and food processing wastes as potential biomass resources. It is anticipated that the Bioenergy Action Plan will be published later this year.

5.21 In assessing the ongoing effectiveness of NILAS, as set out above, the Department will also need to consider the context of other existing policies to divert biodegradable waste from landfill going forward, most notably landfill tax. This will inform consideration of the most effective combination of policies necessary to ensure that NI meets its share of the UK targets.

Potential future policies to divert biodegradable waste from landfill

Additional Landfill Restrictions

5.22 Policy options that might be introduced that will impact on the amount of BMW sent to landfill are already under consideration. In parallel to this consultation is a separate consultation on the possible introduction of additional landfill restrictions. The options being considered for a range of waste types are:

- Do nothing;
- Introduce landfill restrictions either a) on their own or b) accompanied by a requirement to sort;
- Introduce a sorting or tougher pre-treatment requirement but without a landfill ban; and
- Introduce producer responsibility systems linked to recycling targets.

5.23 The range of waste types being considered for landfill restrictions includes paper/card, food, garden waste, wood, or all biodegradable waste amongst others. Non-biodegradable metals, glass and plastics are also being considered. Clearly the introduction of landfill restrictions on any of these biodegradable waste types would have a significant impact on meeting the landfill diversion targets. However, research supporting the landfill restrictions consultation notes that it would be difficult to implement landfill restrictions in less than five years, particularly in the case of waste types such as food, wood and garden waste where they would rely significantly on treatment infrastructure. In the case of biodegradables a lead-in time of 7-10 years is considered more appropriate because of the large amount of material covered and the time it takes to develop alternative infrastructure. Therefore, these options are likely to only be of relevance to the 2020 target, if at all.

5.24 However, it is worth noting that the primary objectives for considering landfill restrictions are much broader in that they will be assessed in terms of their contribution to reducing greenhouse gas emissions and promoting resource efficiency. Restrictions on certain waste types will not be introduced to specifically meet the landfill diversion targets, but if they are introduced they may well impact considerably on NI's progress towards the 2020 target, and views on the policies needed to meet the targets need to be considered in this context. Therefore, the question of whether landfill restrictions should be introduced is external to this consultation, and views specifically on this issue should be made in response to the landfill restrictions consultation. The *Consultation on the introduction of restrictions on the landfilling of certain wastes* is available on the DOE website. (www.doeni.gov.uk/waste)

Waste Framework Directive

5.25 There is also the potential for measures which will be introduced to implement the requirements of the revised Waste Framework Directive to have a substantial impact. For example, the Directive includes requirements that the waste hierarchy should be applied as a priority; that waste prevention programmes are introduced by 2013; and that the separate collection of at least glass, plastic, paper and metal must be in place by 2015. In addition, the Directive introduces a 50% preparing for reuse and recycling target on

household waste and 70% preparing for reuse, recycling and recovery target for construction and demolition waste, by 2020. Transposition of the Directive will be the subject of a further consultation which the Department intends to publish in 2010. Again, whilst the proposed specific measures will not be in direct response to the changed landfill diversion targets they will have the potential to influence Northern Ireland's ability to meet its targets.

Extending the scope of NILAS

5.26 District Council obligations to collect waste could be amended to cover all of the new definition of municipal waste, and to extend NILAS to cover all of this new waste. Although District Councils are already required to collect commercial waste, if requested by the producer of the waste, for a variety of reasons they collect a relatively small proportion of this waste stream and this would be a radical change in extent of their waste management responsibilities. In addition there are likely to be practical difficulties in adequately framing District Councils obligations in legislation to ensure all waste counted as municipal waste under the new approach, but only municipal waste, was captured. This is not an option that the Department is considering pursuing further.

5.27 Alternatively the coverage of NILAS could be extended to cover all municipal waste, including that managed entirely by private sector waste management companies. However, there are likely to be significant practical difficulties in establishing which waste management operators should be covered by the scheme, who allowances should be given to, and at what level. Again this is not an option that the Department is considering pursuing further.

Consideration of options

5.28 As outlined above there are a range of policies in existence and potentially forthcoming that will impact on the amount of biodegradable waste sent to landfill. The Department must ensure that it is confident that NI will meet its share of the landfill diversion targets. To date this confidence has been provided by NILAS, and it may be viewed as necessary to continue this scheme in some form through to 2020.

5.29 However, the range and scale of policies and technologies to divert biodegradable waste from landfill have changed considerably since NILAS was introduced. While it is the Department's preferred option to retain the NILAS scheme, at least until 2013, the revised approach to municipal waste provides an opportune moment to review any changes required in future, and to consider the impact of the range of other existing, and potential measures (including the proposed review of public administration (RPA)).

Q.4: Do you consider that NILAS is an effective policy to assist NI in meeting its share of the UK landfill diversion target in:

- a) 2013**
- b) 2020**

Please provide evidence to support your views if possible. In particular it would be useful to know the role NILAS plays in future planning by

District Councils/waste management groups to divert waste from landfill.

Q.5: What policy instruments should the Department consider in its assessment of those necessary to meet the landfill diversion targets in 2013 and 2020? Please provide evidence to support your response if possible.

Q.6: Are there other policy options specifically to divert biodegradable municipal waste from landfill that the Department should be considering?

6. Amending existing legislation to report against the Landfill Diversion targets

6.1 As a result of revising the UK interpretation of the definition of municipal waste and the landfill diversion targets there are some changes that will need to be made to the relevant domestic legislation that relates to these targets. These are the Waste and Emissions Trading Act 2003 (“WET Act”) the Landfill Allowances Scheme (NI) Regulations 2004 (“NILAS Regulations”), and the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (“Targets Regulations”). The section below outlines the Department’s initial consideration of the changes that are necessary. In addition there are discretionary changes that could be made at the same time. For example amending the definition of waste included in NILAS to clearly exclude separately collected construction and demolition waste (see paragraph 3.7). The changes necessary will in part also be dependent on the outcome of the assessment of which policies are necessary to ensure NI meets its revised landfill diversion targets.

6.2 It is the Department’s intention to present specific proposals for one set of consolidated legislative changes in the planned second stage consultation. To help inform the development of those proposals your views are sought on a number of the issues set out in this section.

Definition of waste to be included in NILAS

6.3 If municipal waste is to be used going forward to relate to the subset of waste that is relevant to the Landfill Directive targets then it can no longer be used as the term to cover the subset of waste that is covered by NILAS (on the assumption set out in Chapter 5 that NILAS continues to apply to waste collected by District Councils only). An alternative term is required and the initial proposal is that the subset of waste to which NILAS applies is referred to as District Council “collected waste”, as it essentially refers to waste collected by District Councils.

6.4 There are numerous references to ‘municipal waste’ (MW) and ‘biodegradable municipal waste’ (BMW) in both the WET Act and the NILAS Regulations. Where the reference is to the Landfill Directive target these will remain unchanged. However, where the reference is to the NILAS scheme these will need to be amended to ‘collected waste’ and ‘biodegradable collected waste’.

6.5 For example section 1 of the WET Act provides for the setting of maximum amounts of BMW that can be sent to landfill in respect of the UK, England, Scotland, Wales and Northern Ireland. These must be consistent with the UK’s obligations for the diversion of BMW from landfill under Article 5(2) of the Landfill Directive. We are not proposing to amend this section because this continues to implement our EU obligations.

6.6 However, sections 11, 12 and 13 of the WET Act set out some of the powers allocating authorities have for making regulations dealing with landfill allowances. These powers have been used in NI in relation to the NILAS Regulations. As this regulation-making power will only be used in relation to NILAS, which will address biodegradable collected waste, we propose

changing this so that it applies to biodegradable collected waste (BCW) rather than BMW. We propose to make a similar change in respect of the duty on District Councils to have regard to guidance on BMW, so that this will refer to guidance on BCW instead.

6.7 Section 21 of the WET Act provides the definitions of 'biodegradable waste', 'municipal waste' and 'biodegradable municipal waste'. It is proposed to separate out those sections dealing with the Landfill Directive BMW targets from those relating to NILAS on the basis of BCW and this will need to be reflected in the definitions included in this section. However, the definition of 'biodegradable waste' does not need to change and we are not proposing to change the definition of municipal waste as this corresponds to what is used in the Landfill Directive and will be the basis on which the BMW diversion targets are set under section 1 of the WET Act.

6.8 In a similar manner references to BMW in the NILAS Regulations will need to be considered and amended if necessary. On this basis, separate references to 'collected municipal waste' should no longer be needed, as all the waste dealt with by NILAS will be collected waste, so we propose to remove these.

Q.7: Do you agree with the proposal to create the concept of “Collected Waste” as a means of NILAS continuing in its current form as a policy addressing waste collected by District Councils.

Q.8: Is “Collected Waste” the best term, or is there a better alternative?

References to targets

6.9 References in The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (“Targets Regulations”) will need to be revised. These regulations set out the landfill targets for BMW, in accordance with the requirements of section 1(1) of the WET Act and in order to meet the requirements of the Landfill Directive. Therefore, they will continue to refer to BMW but the targets included in the Regulations will need to be amended to reflect the new targets.

Allocation of allowances

6.10 Section 4 of the WET Act deals with the allocation of allowances under NILAS. It is proposed that NILAS will only deal with BCW, but that allocating authorities will still be under a duty to ensure that the allowances they allocate do not authorise more BMW to be sent to landfills than is allowed under section 1 or 2. This will help ensure that BCW allocations are consistent with the BMW targets and that NILAS continues to serve as a means of helping to meet the Directive targets to reduce BMW to landfill.

6.11 We would therefore amend section 4(1) of the WET Act so that allowances for BCW rather than BMW are issued but retain the duty in section 4(2) for allowances to be allocated in a way that is consistent with BMW targets. We are also proposing to amend section 4(4). This requires allocating authorities to publish statements explaining what allowances they have given and the basis for that allocation. The amendment would make it clear that this

explanation must include a reference to the duty not to exceed the BMW targets in section 4(2).

6.12 In practice we are not proposing to change either the total quantity of allowances issued, or the individual allocations to District Councils. Under the proposal to amend NILAS to cover collected waste the total amount of waste covered by NILAS will remain broadly the same. And this subset of waste will need to continue to be diverted from landfill at a rate comparable with the wider municipal waste targets to contribute its proportionate share of the reduction of BMW to landfill. In addition District Councils have known the current level of allocations since the outset of the scheme and their forward planning has been based on this level of allocations. Therefore, we are proposing that the fairest approach is to maintain the existing allocation of allowances for NILAS, although these will need to be revised subject to RPA.

Q.9: Do you agree that allocations of landfill allowances to District Councils should be retained as currently allocated for each NILAS scheme year?

Supplementary penalties

6.13 Under the NILAS Regulations (regulation 19) District Councils who exceed their allowances in a target year in which the UK also exceeds the maximum set by sections 2 and 3 of the WET Act are liable to a supplementary penalty. The level of the supplementary penalty is set by dividing any fine received from the European Court of Justice for breach of the Directive between District Councils which have exceeded their allowance in proportion to the excess land filled.

6.14 Given the disconnect between the wider approach to municipal waste and the more limited notion of collected waste by District Councils the specific provision in regulation 19 may need to be removed. Further consideration will be given to the need for, and application of the provisions in 9(3) and (4) of the WET Act, which provides for supplementary penalties for District Councils where landfill allowances are exceeded and overall BMW targets are missed. However, the Department remains committed to retaining the right to enforce some form of supplementary penalty.

Northern Ireland targets in non-target years for the Landfill Directive

6.15 Section 2 of the WET Act allows the devolved administrations to also set maximum amounts of BMW that can be sent to landfill in non-target years. The Target Regulations set out maximum amounts for the years 2005 to 2008.

6.16 Section 3 of the WET Act sets out a formula for working out what the BMW targets will be in those years where: (i) there is no target under the Landfill Directive for that year but there is for the following year; and (ii) the power in section 2 to specify BMW targets for non-target years has not been exercised.

6.17 We are considering whether we need to retain a mechanism for setting BMW targets outside Landfill Directive target years, given that the separate BCW targets will continue to be set on an annual basis through the allocation of allowances. Options include:

- exercising the section 2 powers to set targets for BMW in all non-target years, as is the current position, meaning the formula in section 3 would never be used;
- exercising the section 2 powers in some non-target years, in order to help determine whether the Directive BMW targets are likely to be met, and providing an opportunity for further steps to be taken;
- not exercising the section 2 powers and relying on the section 3 formula in applicable non-target years in either its current form or an amended form;
- not exercising the section 2 powers and removing section 3 so that targets would only be set for target years.

Q.10: Do you think targets for BMW to landfill should be set in non-target years, and if so, on what basis?

Borrowing and Transferring of Landfill Allowances

6.18 Regulation 8 of the NILAS Regulations allows the Department to suspend the borrowing and transferring of allowances where there is a risk that the total amount of BMW sent to landfills in a non-target year exceeds the prescribed maximum amount. Whether we need to change this will depend on whether we set BMW landfill limits for non-target years (see sections 6.15-6.17 above).

6.19 If we do specify BMW limits for non-target years, we propose to retain the powers in regulation 9 because this will still help to ensure that the movement of BCW allocations does not lead to problems in meeting the BMW targets.

Glossary of abbreviations

BCW	Biodegradable Collected Waste
BMW	Biodegradable Municipal Waste
C&I	Commercial and Industrial
CW	Collected Waste
EWC	European Waste Catalogue
NILAS	Northern Ireland Landfill Allowance Scheme
PFI	Private Finance Initiative
RPA	Review of Public Administration
WDF	WasteDataFlow
WET Act	Waste and Emissions Trading Act 2003

EQUALITY SCREENING

Background

Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity between:

- persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- men and women generally;
- persons with a disability and persons without; and
- persons with dependents and persons without.

In addition, without prejudice to its obligations above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinions or racial group.

The Landfill Directive (1999/31/EC) set challenging targets for Member States to reduce the amount of biodegradable municipal waste sent to landfill – the “landfill diversion targets”. Following discussions with the European Commission, this Department, DEFRA and the other devolved administrations have agreed that the UK’s approach so far to meeting those targets should be changed. This consultation addresses the implications of changing the UK’s approach to meeting these landfill diversion targets.

Screening Analysis

The purpose of this exercise is to assess whether or not the Department’s proposals to amend the definition of municipal waste may or may not have a differential impact on any of the section 75 categories. It has been performed in accordance with the Department’s Equality Scheme approved in 2001. It is based upon the criteria contained in the guidance for performing the “screening” to identify if any of the nine categories of groups identified in section 75 might be affected by the policy proposals (religion, political opinion, race, age, marital status, gender, sexual orientation, disability, dependents).

The screening analysis is summarised below:

1. Is there any indication or evidence of higher or lower participation or uptake by different groups within any of the nine categories?

NO

2. Is there any indication or evidence that any of the section 75 categories have different needs, experiences, issues and priorities in relation to this policy issue?

NO

3. Have consultations in the past with relevant groups, organisations or individuals within any of the section 75 categories indicated that policies of this type create problems that are specific to them?

NO

4. Is there an opportunity to better promote equality of opportunity or community relations by altering the policy or by working with others in Government or in the larger community in the context of this policy?

NO

Conclusion

As a result of the screening analysis, we consider that there will be no significant implications for equality of opportunity as a result of the policy and legislative proposals outlined in this consultation document. A full Equality Impact Assessment is therefore not required.

RURAL PROOFING

Rural proofing is a process to ensure that all relevant Government policies are carefully and objectively examined to determine whether or not they have a different impact in rural areas from that elsewhere, because of the particular circumstances of rural areas, and, where necessary, what policy adjustments might be made to reflect rural needs and in particular to ensure that, as far as possible, public services are accessible on a fair basis to the rural community.

This paper is a first stage consultation on the options under consideration by the Department to meeting EU Landfill Diversion Targets. It is intended to identify option(s) which could be taken forward if desirable, practical and affordable. If the Department decides change is desirable a second stage consultation will follow containing further details on the preferred option(s) and the way any amendment to the definition of municipal waste will be introduced and who any restriction or requirement would fall upon. The consultation will be accompanied by draft Regulation(s) to implement these option(s). The proposals would mainly affect District Councils and waste management companies. The Department is of the view that the proposals will not have a different impact in rural areas and will not affect accessibility to public services in rural areas. Further rural proofing will be part of any proposed second stage consultation.