

# Further Regulation in the Waste Sector— A Private Sector Perspective

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During the summer the Department of Environment, Heritage and Local Government (“DEHLG”) published a consultation paper, Regulation of the Waste Management Sector.<sup>1</sup> It invited interested parties to submit their views on whether or not the waste management sector should be regulated. In response, IBEC and the Irish Waste Management Association<sup>2</sup> submitted detailed submissions on the future regulation of the waste management sector. This article summarises the key elements of the Irish Waste Management Association’s submission, and aims to provide a private sector perspective on the need for further regulation in the waste sector.<sup>3</sup>

## **Introduction**

The structure of the waste management sector in Ireland has changed significantly over the past decade with a partial withdrawal of local authorities from operations and substantial investment by the private sector. Waste management has become highly professionalised and increasingly regulated. Presently there are 29 legislative instruments<sup>4</sup> and 12 different regulators<sup>5</sup> regulating waste management in the State. Public policy has evolved towards an emphasis on the “polluter pays” principle and the waste management hierarchy. Much of this legislation was badly needed. It helped drive the right behaviour, shape the commercial and operating landscape, and ensure that illegal operations were reduced or eliminated.

Despite this rapid and ongoing change, it has been concluded in some quarters that the current system is not effective<sup>6</sup> and that public intervention is required. The Minister for the Environment, Heritage and Local Government has expressed a wish to see a regulator appointed to oversee the future operation and development of the sector in Ireland. In August 2006, the Department of the Environment, Heritage and Local Government ( the “DEHLG”) initiated a public consultation process, aimed at examining the possible regulation of the waste management sector. The Department’s consultation paper posed the following issues for discussion:

- Is another regulator needed for the waste management sector?
- What model of regulation is most appropriate?
- Who will be responsible for the regulation of the waste sector?
- What services should fall within the remit of a regulator?
- What functions should a regulator have?

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<sup>1</sup> The paper is available at the DEHLG website [www.environ.ie](http://www.environ.ie).

<sup>2</sup> The IWMA is an affiliate organisation of IBEC, that is the recognised national representative body for the private waste industry.

<sup>3</sup> In particular, this article is based on the submission of the IWMA “*IWMA Response to DEHLG Consultation Paper – Regulation of the Waste Management Sector*” to the DEHLG in October 2006. The submission will be made available on the IBEC website at [www.ibec.ie](http://www.ibec.ie).

<sup>4</sup> Colloquially known as the Waste Management Acts 1996–2005. The legislation establishes regulatory roles and provides for the regulation of every waste management activity e.g. the identification and classification of waste; the collection, transfer and movement of waste streams; the planning and the management of waste infrastructure and services;

<sup>5</sup> The Environmental Protection Agency, An Bord Pleanála and local authorities organised as 10 Regional Waste Management Authorities.

<sup>6</sup> Waste Management Benchmarking Report, June 13, 2006, Forfás.

Despite some concern that the content of the consultation is not commensurate with the importance of the decision to be taken, the Irish Business and Employers Confederation (“IBEC”) and the Irish Waste Management Association (“IWMA”) welcomed the “consultation paper”, its openness and the scope it offered for informed debate on how waste management should be regulated in Ireland. The need for the review was clear as Government recognised that a conflict of interest exists in the waste market where local authorities act as both market players and regulators of their competitors in the private sector. An effective, competitive and environmentally sound waste management sector can help the country meet social, environmental and economic objectives. Both IBEC and the IWMA believe effective and better regulation has a role in helping the waste management sector meet these objectives. However, the IWMA has argued that it does not see the need for *further* regulation and *new* regulators at this time; rather a more effective use of existing regulatory structures and institutions is required, *i.e.* better regulation.

This paper outlines the positive role that better regulation can play in contributing to the delivery of an effective, competitive and environmentally sound waste management sector. It also seeks to express the perspective of the private sector with regard to structural challenges facing the sector in developing an effective waste management system for the country. It also suggests some constructive solutions to address these structural challenges and attempts to contextualise and respond to the five questions posed in the Consultation Paper.

### **Principles on the role of regulation in the waste sector**

The most concise statement of the approach to be adopted in relation to regulation in Ireland is contained in the White Paper *Regulating Better* produced by the Department of the Taoiseach in January 2004. The core of this paper is the setting out of six principles that are to guide regulation in Ireland. These are to be applied to any proposal for regulation. They are:

1. Necessity: convincing arguments based on data are required before introducing regulation, bureaucratic costs must be minimised and existing regulations must be reviewed regularly;
2. Effectiveness: regulations should be targeted rather than general and must only be introduced if they can be enforced effectively;
3. Proportionality: alternatives are preferable to regulations if available, the cost of complying should be kept low and penalties for non-compliance must be appropriate, and a system of regulatory impact analysis should be used;
4. Transparency: consultations are to be undertaken, PSOs should be clarified in advance and the regulations are to be kept as simple as possible;
5. Accountability: regulators and enforcement agencies are to be accountable to the Dáil and an improved appeals procedure is to be developed;
6. Consistency: regulatory bodies should be as similar as possible in their activities and regulations in particular sectors are to be tested to ensure they are consistent.

In terms of the Department’s consultation paper there are important questions in relation to a number of these principles before further regulation could even be contemplated. Many, including the IWMA, question the need to introduce a new regulator at this time. The waste sector is already highly regulated: by the Environmental Protection Agency (the “EPA”), local authorities and An Bord Pleanála from an environmental perspective; and the Competition Authority from a cost, price and market perspective. The assertion that waste is the only utility sector without a “specific” regulator as rationale for its introduction is inadequate. In addition, no regulatory impact assessment, as required by policy, has been undergone to justify the need for a new regulator or further regulation. Furthermore, it can be argued that establishing a regulator is unnecessary, duplicates existing functions and is likely to be lengthy, complex, adversarial and costly. Sufficient regulations and institutions exist to bring about results in a timely, effective and efficient manner. The drive for a new regulator comes from concerns related to a small part of the market. Of the total waste produced in the State, only 2 per cent consists of household waste, yet this segment has a near monopoly on the political focus.

In the UK, following the Hampton Review on Regulatory Inspections and Enforcement, the Department of Environment, Food and Rural Affairs gave a commitment to reduce the regulatory burden in the UK by 25 per cent by 2010. In Denmark, an Action Plan published in 2002 contained a target to reduce the regulatory burden on businesses by 25 per cent in four years. In light of international best practice, the DEHLG should consider setting such a target for Ireland. There are serious issues of regulatory inconsistency between the existing 12 regulators governing waste management. This inconsistency and ineffective implementation has hampered the sector. Further regulation that reinforces the status quo will jeopardise the sector’s ability to meet environmental,

social and economic goals. In summary, what the industry needs is for these principles to be enforced across the waste management sector, *i.e.* better regulation, not further regulation.

### **Regulatory experience in other sectors**

Experience with existing regulators in Ireland such as telecommunications and energy, shows that it is possible for a regulator to successfully oversee the liberalisation of a sector and the creation of competitive markets that were previously controlled by public sector monopolies. However, this process is made extremely difficult and may be curtailed where incumbents are allowed to retain control of key assets while competing with the private sector. Therefore, the IWMA and others have called for the dual role of local authorities in the sector to be addressed first by ministerial order or legislation before further regulation can be contemplated.

### **Structural challenges and solutions facing the waste sector**

The waste management sector is already highly regulated. A robust regulatory regime has a role in supporting the sector meet social, economic and environmental goals. However, existing regulation poses structural challenges to the sector in meeting these goals. In the context of waste policy, it is submitted that the private sector, including the IWMA, is broadly supportive of government waste policy goals with its focus on delivering an integrated waste management system underpinned by the “polluter pays” principle. However, a number of structural challenges face the waste sector.

### **The role of local authorities in the waste sector**

A number of regulatory concerns arise out of the role of local authorities in the waste sector. Under the current regulatory framework, local authorities enjoy a privileged commercial role and a dominant position in key market areas. If local authorities are to be allowed to continue as a market player in the waste management sector, they should compete under the same regulatory and commercial rules as the private sector. This could be achieved by allowing local authorities to transfer their waste asset/operating activities into an independent limited company that would then trade on a level playing field with the private sector, similar to the system introduced in the UK<sup>7</sup> in the 1980s. As the role of local authorities is currently enshrined in legislation, it should be clarified in amendment legislation or ministerial direction. The IWMA believes that the responsibility for clarifying the role of local authorities in waste management lies with the DEHLG.

A number of specific regulatory concerns arise out of the current system of waste management planning. There is a conflict of interest in the dual role played by local authorities as both waste management planners and waste management service providers. Until recently, inconsistencies existed between the treatment of public and private sector developments by An Bord Pleanála (“ABP”) over the “regionalisation” issue. For example, in the North-east region, Knockharley landfill (a private sector development) and Whiteriver landfill (a local authority development) were subject to differing interpretations on inter-regional co-operation and the proximity principle by ABP. Knockharley could not accept waste from outside the region, but Whiteriver was, and still is, permitted do so. Clearly, this situation provided local authority facilities with a competitive advantage and hampered private sector market entry into the same geographical area. Furthermore, the Whiteriver decision was a major contravention of the stated recommendations of the regional waste plan. Despite a statutory obligation to have regard for the regional waste management plans, both ABP and the EPA allowed local authorities in the North-east region to expand their landfill capacity beyond that provided for by their own waste management plan for the region<sup>8</sup>. The capacities for each waste management technology identified in regional waste management plans are intended to protect waste policy aims such as the waste management hierarchy. If regulators do not protect stated waste policy aims, as in Whiteriver, they disincentivise private investment in alternative, competing technologies and, at worst, promote regional monopolies or a reliance on one technology to the exclusion of an integrated approach to waste management.

Government policy states that in “updating the waste management plans the local authorities concerned will pay particular attention to ensuring effective engagement with the private waste industry; and the outcome of this engagement, together with other relevant factors, will be reflected in the final updated waste management plans adopted”.<sup>9</sup> This is a positive step forward. However, it is submitted that we have only seen partial evidence of “engagement” to date. The industry actively participated in the consultation stage of each regional waste management plan, as its membership is playing an increasing role in the delivery and operation of key waste management services. It is felt that private sector concerns are not reflected in the final waste plans adopted. In addition, there is no

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<sup>7</sup> UK Local Authority Waste Disposal Company (LAWDC) system

<sup>8</sup> ABP Reference: PL. 15.E.L. 2004 and EPA Reference 60-2.

<sup>9</sup> Waste Management, Taking Stock and Moving Forward – DEHLG (2004).

redress mechanism in the plans if valid concerns are not taken on board. The industry feels that regulation should provide a clear mandatory, rather than arbitrary, structure where effective public-private engagement on the waste plans can happen and where the results of this engagement are tangible and quantifiable.

A further problem is that waste management planning in Ireland consists of several unconnected waste management plans<sup>10</sup> developed in isolation and regulated by several different agencies.<sup>11</sup> Private waste operators now have responsibilities to waste customers on a national basis, rather than just in a number of arbitrary functional areas. While private industry generally supports the regional waste management plans, there are concerns that there is no linkage between the various plans. There is no single agency co-ordinating, monitoring or protecting the regional waste plans in the country. Some commentators have questioned who exactly is responsible for the regional waste management plans.<sup>12</sup>

### **Regulatory Regulation**

In response to these regulatory concerns the following recommendations have been suggested by the IWMA and others. There is a need for further co-ordination of the various waste plans on a national level to better facilitate implementation and delivery. A single agency, with no commercial interest in the sector, should monitor, co-ordinate and protect waste policy goals in the regional waste management plans. The IWMA has argued that the co-ordination of the regional plans is a policy matter and should be dealt with by the DEHLG and implemented by a resourced EPA. The conflict of interest in planning posed by local authorities acting as both market player and regulator of their competitors in the private sector must be addressed. In this regard the industry has welcomed the Government's recent positive steps towards a common regulatory framework, via the Planning and Development (Strategic Infrastructure) Act 2006, to place planning applications for all comparable waste developments under the remit of An Bord Pleanála. All operators must adhere to the provisions of the regional waste management plans and the DEHLG guidance on inter-regional movement of waste equally.

In order to facilitate public and private sector co-operation in the implementation of the replacement regional waste management plans, a representative from the private sector should be invited to participate in each regional steering group that oversees their implementation. The implementation of the regional plans should be monitored on an ongoing national basis by the DEHLG or a single agency and the results made public.<sup>13</sup>

### **Waste facility and waste collection permits**

A number of concerns arise out of the current system of waste facility and waste collection permits<sup>14</sup>. Different regulatory regimes exist for private versus public operators in regard to comparable waste management facilities and waste collection activities. Local authorities are not required to seek waste facility permits or waste collection permits for their operations. There is a perception within the industry that there is ineffective and inconsistent administration/enforcement of regulation by local authorities across 10 regional waste management areas. The bureaucracy and cost of regionalising the regulation of permits is prohibitive to private operators. At the time of writing a 12 month revision of the existing waste facility and waste collection permit regulations is still incomplete, adding to regulatory uncertainty in this area.

To address these concerns comparable public and private waste facilities and waste collection activities should be subject to the same regulatory process and requirements. Waste collection permits should be flexible to allow small or short-term operational changes without triggering a full regulatory review, e.g. the addition of a new vehicle or specialist equipment. This flexibility would help facilitate service provision during periods of high demand or where a vehicle is temporarily out of commission. The administration, cost, and enforcement of both waste facility and collection permits should be consistent across geographical and sectoral (public and private) lines. Consistency facilitates adequate and transparent regulation of the whole sector.

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<sup>10</sup> Ten regional waste management plans, a National Hazardous Waste Management Plan, a National Waste Prevention Programme and a National Biodegradable Waste Strategy.

<sup>11</sup> Ten regional waste management planning authorities, 34 local authorities, the EPA, An Bord Pleanála and the DEHLG.

<sup>12</sup> Who are the protectors of the Regional Waste Management Plans in Ireland? CEWEP (2005).

<sup>13</sup> Similar to the Department's review of the current regional waste plans, *National Overview of the Waste Management Plans* – DEHLG (2004).

<sup>14</sup> S.I. No. 165 of 1998 and S.I. No.540 of 2001 as amended.

It is submitted that a single central authority, with no commercial interest in waste management should administer and enforce the regulation waste facility permits and a single national waste collection permit.

The IWMA believes that a clear candidate for this role is a resourced EPA. The advantage of this approach is the Agency's regulatory experience with public and private operators in the sector.

#### **Administration of Transfrontier Waste Shipments ("TFS")**

The administration of Transfrontier Waste Shipments ("TFS") also gives rise to certain concerns. Like most waste regulation, the administration of waste exports is regionalised. The industry is concerned that there is a significant disparity in the administrative costs for shipping waste from different local authority functional areas. It feels that costs in certain regions are excessive, distort competition in the sector and are a barrier to operating in certain regions of the country. For example, South Dublin County Council ("SDCC") remains one of the most expensive areas to operate. South Dublin's charges are higher than several areas with comparable TFS volumes and areas who have charge of ports and their associated export activities, *e.g.* Munster and Dublin City. SDCC's TFS administrative charge was 475 per cent more expensive than the national average cost deemed appropriate by other local authorities in 2005 and was 325 per cent more expensive than the national average in 2006.

It is estimated that in 2005, the comparative cost for a typical member company's volume of TFS documents was €43,000 compared to the actual SDCC charge of €120,000 or a national average of €31,700.

To address these regulatory concerns it is submitted that the following measures should be considered. TFS administration should be centralised or co-ordinated by one regulatory body, *i.e.* the EPA. TFS administration costs should be transparent, proportionate and consistent for all operators across the country. The UK Environment Agency publishes clear pricing guidelines which were drawn up following public consultation. Administration and enforcement costs should be documented, justified and available. Price changes should be signalled as far in advance to operators as possible for budgeting purposes. Regulators must validate the necessity for information, ensure utilisation of all available delivery channels and require information to be only collected once.

#### **Waste regulation—financial instruments**

A number of "market based" instruments are currently deployed as part of the Irish system of waste regulation. The "Environment Fund" is financed by a levy imposed on the use of landfill or plastic bags. These market-based instruments should affect most consumers equally, irrespective of who their waste service provider is. The regulatory function of the fund is to change consumer behaviour and, to a lesser extent, support waste management initiatives.<sup>15</sup> While the private sector agrees with the fund being used to change behaviour and support social or uneconomic infrastructure, *e.g.* bottle banks etc., it has concerns that grant aid from the fund presents a competitive advantage to public operators over private operators when it comes to developing comparable and competing infrastructure. Grant aid from the fund is not open to private operators in the waste sector at present. While 60 per cent of municipal waste is collected by the private sector, it cannot access the Environment Fund. Therefore, private operators cannot pass on any potential service benefit to their customers that the fund would bring. By the end of 2005, €42 million of the fund had been used to support local authority waste management infrastructure and recycling operational costs.<sup>16</sup> Approximately €1.9 million of the fund was used to resource waste management enforcement initiatives by local authorities and the EPA's Office of Environmental Enforcement ("OEE"). However, the use of funds raised from such market-based instruments raises a number of concerns. Consumers subject to environmental levies in areas serviced by the private sector may not receive the benefits of the Environment Fund. While the regulation's aim is "polluter pays", not all of the population are impacted by the fund in the same way.

Household consumers serviced by the private sector are subject to VAT. This situation allows local authorities a 13.5 per cent (estimated €30 million) commercial head-start, where there is direct competition between the public and private sector for household services. Similar to the fund situation, it means that the tax burden is uneven. At worst, the extra cost is a disincentive to the uptake of waste management services and encourages unauthorised waste activities, *e.g.* backyard burning. This

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<sup>15</sup> See s.74(9) of the Waste Management Act 1996, as inserted by s.12 of the Waste Management (Amendment) Act 2001 and the Waste Management (Environment Fund) (Prescribed Payments) Regulations 2003.

<sup>16</sup> Written reply to Question 663, Ref. 30591/05 Minister for the Environment, Heritage and Local Government (Mr Roche) October 25, 2005.

situation has recently been highlighted as uncompetitive by the European Commission.<sup>17</sup> The IWMA believes that ministerial direction is required in this area.

### **Response to the issues raised in the Consultation Paper**

The IWMA believe that clarification of the local authority role in waste management must be provided by the DEHLG as a priority.

#### *The need for regulation*

The first issue that arises is the need for additional regulation. As previously highlighted, there are 29 statutory instruments and 12 different regulators regulating the environmental aspects of waste management in the State. The competition authority regulates the sector from a market perspective. Therefore, one must query the need for further regulation and new regulators at this time. It is submitted that the industry would prefer a more effective use of existing regulatory structures and institutions, *i.e.* better regulation and enforcement in meeting economic, environmental and social goals. The consultation has raised the possibility of leaving the sector unchanged, *i.e.* “doing nothing”. It is submitted that this is not an acceptable option although the action programme identified in the consultation paper is far from ideal. Rather than regulations that could undermine the market and competition that has been created, the Department should be focussing on enforcement and structural issues. The sector has clearly demonstrated that economic incentives do work, *e.g.* pay by use. The opportunities to achieve objectives through incentives should be maximised. Regulation of private collection services would not reduce prices as these are driven by external costs, particularly landfill costs, and are in line with the principle that waste producers should bear the cost of disposal. The main problem identified is the dual role of local authorities as regulators and market players and the impact on competition in the market. Incentives alone appear unlikely to resolve this issue. Ministerial direction, perhaps through budgetary allocation, to identify and delineate the appropriate role of local authorities is preferable. In addition, a renewed emphasis should be placed on using incentives to achieve policy targets, such as composting and recycling, in both private and local authority operations, although it is important that this does not further distort competition through subsidising facilities that would compete with existing non-grant aided investments. This would be achieved through supporting markets for high grade materials rather than investment grants.

#### *The model of regulation*

Local authorities must compete on a level commercial and regulatory playing field with their private sector colleagues. Local authorities should be involved in either regulation or operations, not both. It is submitted that the way forward is not really a choice between these alternatives but requires a strong central enforcement agency for performance regulation with an input mechanism for the industry. However, the market should be the key determinant of activity within this regulatory environment. The preferred view of the industry is that structures should be introduced that would amount to co-regulation. This could take the form of a resourced EPA with an allowance for input from the industry. The industry has grave concerns around the possible introduction of another level of bureaucracy and dilution of policy responsibilities within an already highly regulated sector. The Department and a better resourced EPA should be adequate to sort out the issues identified. Overall, provided the industry is allowed an input role and the office is truly independent, the precise structure of the entity is seen as less important than the powers and resources that are provided.

#### *Scope of regulation*

It is submitted that the role of any regulator should be in ensuring that local authorities compete on equal terms with the private sector in waste management. The regulator should have a role in standardising and centralising administration issues such as permits, co-ordinating waste plans and the transference of EU law into Irish policy. There may also be a role in ensuring that the incentives to achieve policy targets are appropriate and in enforcing existing policy and regulations. The regulator should not undermine the market where competition is working adequately, such as in the commercial collection area, and should not direct waste in a manner that would undermine the competition that is emerging in the sector. The decision regarding the regulator’s remit should not be based on the type of waste but rather on the competitive structure of the market in question, policy objectives and how these

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<sup>17</sup> Under the Sixth VAT Directive, public bodies should be treated as taxable persons in a number of cases and, at any rate, where doing otherwise would result in significant distortions of competition, Case 430/04 (ECJ, June 2006).

are to be achieved, and the possible existence of market failures such as social objectives. It is submitted that there is no role for a regulator in commercial waste collection.

#### *Functions of regulator*

In this context the consultation paper raises four possible functions of a regulator (1) the determination of an appropriate waste charging structure; (2) the imposition of Public Service Obligations; (3) the supervision of competitive tendering arrangements; and (4) operational issues. In respect of waste charges, the IWMA totally opposes intervention in price setting for waste charges. Its position in this regard is in accordance with the Competition Authority as waste charges are effectively being set by the market and would be impossible for the regulator to achieve. Any effort to set prices would lead to large anomalies, would probably increase average prices and would undermine competition. The best solution is to ensure that adequate facilities are created as this should increase competition and access, thereby reversing the incentives to dispose of waste illegally. Further, it is better to use the landfill levy to increase costs—rather than reducing supply to increase prices—and recycle these funds into the industry, such as through promoting markets for recovered materials.

In respect of Public Service Obligations (PSOs), two aspects arise. The first is geographical and relates to providing a service in areas where it is not commercially viable at average prices. The industry is of the opinion that this is really only an issue in a small minority of cases and can be solved through differential pricing and through establishing collection centres in a limited number of cases. In other words, this problem can be solved by appropriate market conditions. There is little danger of this proposal being exploited by operators since any reduction in the service provided would leave the market open to other operators as would any excessive use of different prices. This is a preferable solution to attempting to enforce average prices in all areas, *e.g.* as in the postal delivery service, as the degree of subsidy involved would be excessive due to the much higher marginal costs involved. It is also notable that for the areas with the highest levels of domestic concentration and thus the potential for the lowest prices, *i.e.* Dublin, the local authorities have retained the market and operate in a subsidised manner. Thus, there is an effective reversal of subsidisation, since this subsidy is from public funds, with areas outside Dublin where costs are higher subsidising the capital. This is an indication of the type of structural issue that needs to be addressed before any new regulator is contemplated. The second aspect of PSOs relates to social objectives as encapsulated in the concept of a waiver for specified social groups. The existing system leads to criticism of the sector for failing to provide the waiver that may previously have been available from local authorities. In cases where a household may not be able to pay the costs of collection, it is clear that there is an undermining of both environmental objectives (as the alternative is often illegal dumping) and social principles of equal access to essential services. This imperative gives rise to the PSO but an unfunded PSO would be impossible to introduce in a competitive market as firms would simply withdraw from collection in non-viable areas.

It is submitted that the solution is that this should not be seen as an issue of waste management, but as a policy and social welfare objective. An analogy would be television licensing where the funds to provide a service that can be accessed by all—the public nature of broadcasting means that an explicit PSO is not required—are provided by subventions through the social welfare system, rather than by an increase in the price of the licence to all users. A similar approach is adopted in public transport. When viewed in this manner, it is not difficult to envisage a system whereby a PSO can be introduced and financed in line with competition in waste management. The question that should be asked is whether the benefits to the country of universal waste management, in terms of achieving environmental and social objectives, outweigh the costs to the country of paying for this service. In the unlikely event that net benefits do not arise, then the issue of a PSO does not arise. However, if it is determined that there are net benefits to the country, then these can be achieved through the usual means, *i.e.* provisions of the fiscal and welfare systems. However, this approach has a weakness most notably that some households may experience difficulties in having waste collected due to non-monetary issues; for example, elderly people living away from main routes who may not be in a position to move the waste to a suitable collection point. In addition, there may still be some stigma related to obtaining social welfare. Under such conditions, it is necessary for a central office to act as a single point of contact or appeal rather like an ombudsman. There is an argument that in such cases particular funding may be required and should arise from within the industry, such as through the Environment Fund. In summary, PSOs are a matter of policy. The implementation of a PSO does not require a new regulator. The private waste sector is happy to oblige, provided it is compensated either via the Department of Social Welfare or some other source, *e.g.* the Environment Fund.

#### *Competitive tendering*

In respect of competitive tendering, such arrangements generally exist only in commercial waste management and in niche areas. Regulatory supervision is unnecessary in as far as this process operates. The industry is opposed to an extension to areas where the market operates. However, competitive tendering would have a role where local authorities decide to exit waste collection and could provide the basis for a highly efficient industry to develop. There may be a role for the EPA to oversee such a mechanism although this is not an absolute necessity. Competitive tendering cannot be imposed where competition currently exists.

#### *Operational Issues*

The consultation documentation raised the issue of the role of a regulator in operational issues such as the issues of the renewal and revocation (where necessary) of waste collection permits centrally; enforcement of waste collection permits; the determination of the scope and objectives of the regional waste management plans; the determination of certain waste movements, *i.e.* the direction of waste; and the setting and monitoring minimum standards of service delivery.

It is submitted that there is pretty much unanimous support for operational issues to be handled centrally. The preferred candidate to carry out the implementation aspects of this role could be a resourced EPA. The DEHLG could play the policy role in the determination of the scope and objectives of the regional waste management plans. Indeed, the prospect of progress in relation to these administrative, legislative and policy issues is seen as the main argument in favour of this review. The division of the country into 10 areas, in which regulations are interpreted differently, in which the efficiency of the bureaucracy varies and in which even permit costs vary, is very inefficient and unhelpful. There is also a perception that the local authorities have used their powers in this area to compete unfairly. Even where they might exit collection activities, local authorities can still use their powers to prevent private operation and innovation. Centralisation would ease these difficulties. However, it is imperative that the local authorities would be subject to the regulator and on the same conditions as the private sector.

The IWMA has signalled that it is open to the incentivisation or disincentivisation of waste to tiers in the waste management hierarchy but is strongly opposed to the direction of waste to named infrastructure by a regulator. Directing waste to named facilities would affect competitiveness in the market directly. By directing waste to named facilities, uneconomic infrastructure could be facilitated to the detriment of comparable and competitive infrastructure. Private sector investment and national policy objectives would be jeopardised. The power may be deemed illegal due to restrictions it would place on the waste market. Such a power would be subject to legal challenge.

Regulation would need to ensure that the incentives that operate in the sector are appropriate to achieve the objectives that have been set out in policy to reduce the proportion of waste being landfilled. Thus, when interpreted as a power to ensure that waste is handled by technologies in accordance with the waste hierarchy, there is some merit in arguing for control of the flows of waste. However, this would only amount to enforcement of the regulations as they currently exist and this can be achieved either through regulations or, more efficiently, through ensuring that the appropriate market incentives are in place. The definition of “directing waste” in the context of the role of regulation must not go beyond this approach.

#### **Conclusions**

In summary, the private sector of the waste management industry industry welcomes the Department’s consultation process. The need for the review was clear as Government recognised that a conflict of interest exists in the waste market where local authorities act as both market players and regulators of their competitors in the private sector.

However, it is submitted that the private sector and in particular the IWMA does not see the need for further regulation/regulators at this time, rather a more effective use of existing regulatory structures is required, *i.e.* better regulation. The DEHLG has not produced the evidence as required by policy to justify the introduction of further regulation or a new regulator. The private sector of the waste management industry looks forward to positive developments on these issues, but cautions against unnecessary regulation where solutions can be found through the effective use of existing structures.