

# Ashurst's views on 10 key proposals in the Waste Strategy for England 2018

**Proposal 1:** *"legislate to allow Government to specify a core set of [recyclable] materials to be collected by all local authorities and waste operators"*

**Ashurst's view:** Consistent with the waste hierarchy, there is a strong focus throughout the Waste Strategy on measures to prevent, reuse and recycle waste. Although this must be the right approach from an environmental and sustainability perspective, when it comes to recycling, there are some important questions around whether there is i) sufficient suitable domestic waste treatment capacity (namely, materials recovery facilities or MRFs) to treat increased tonnages of recyclates and ii) a sufficiently stable market for recyclates in order to incentivise investment in new MRFs.

If this policy is successful in increasing recycling there may be an adverse impact over time on EfW facilities due to changes in residual waste tonnage and composition. However, this will depend on a number of local factors affecting the input waste streams. The Government will need to take note that under some PPP/PFI schemes, this risk may sit partly with the public sector (and will transfer to the public sector on contract expiry/ termination).

**Proposal 2:** *"legislating, to ensure that businesses present recycling and food waste separately from residual waste for collection"*

**Ashurst's view:** The same potential issues that apply to proposal 1 apply to this proposal, although there are distinctions in how these issues relate to recyclates as opposed to food waste based on differences in processing capacity for each wastestream. In any case, rather than creating increased tonnages of recyclates and food waste which are ultimately landfilled (which would defeat the purpose of the proposal), we think that it would be preferable for the Government to support investment in new capacity and/or technology to enable such materials to be treated higher up the waste hierarchy.

**Proposal 3:** *"make [existing EfW] plants more efficient, by assessing and removing barriers to making use of heat produced when incinerating waste"*

**Ashurst's view:** If the Government is successful in removing heat offtake barriers (e.g. those relating to planning and heat demand risk) and, as per the Government's recent consultation on heat networks (<https://www.gov.uk/government/publications/heat-networks-developing-a-market-framework>), there is greater Government support for investment in heat networks, there may be a positive economic impact for operational and future EfW facilities that have local heat offtake opportunities available that improve project economics.

**Proposal 4:** *"ensure that all future EfW plants achieve [R1] recovery status"*

**Ashurst's view:** A legal requirement for all future EfW facilities to achieve R1 status may have a neutral impact based on our understanding that most modern EfW facilities which are not CHP-enabled are still able to achieve the required R1 efficiencies (although we understand that this is not necessarily the case for advanced conversion technologies). Therefore, this proposal in combination with proposal 3, appears to support EfW as a viable long term solution.

**Proposal 5:** *"Mandate the digital recording of waste movements"*

**Ashurst's view:** This proposal may have a limited impact on the owners/operators of the majority of EfW facilities in the UK because of the digital data collection systems that are already in place at such facilities (e.g. DCS and SCADA). However, it may require other entities in the waste supply chain who use physical waste transfer notes to purchase suitable software to digitally record waste movements.

**Proposal 6:** *"Should wider policies not deliver the Government's waste ambitions in the long-term, we will consider the introduction of a tax on the incineration of waste"*

**Ashurst's view:** This is clearly one of the Government's most controversial proposals which could have adverse financial consequences for operational and future EfW facilities. However, there are two important points to note. Firstly, the Government has been clear that it will only consider implementing this proposal if its wider policies (of which there are many!) do not deliver its ambitions on waste prevention, reuse and

recycling. Secondly, it is clear to those in the waste sector that implementing such a proposal would in many respects be an "own goal". This is because i) for PPP/PFI schemes, an incineration tax may be passed on to local authorities (and hence the consumer) through change in law provisions, ii) in respect of non-municipal waste, an incineration tax may need to be subsidised by the businesses producing such waste (increasing the costs of waste disposal) who may also look to pass on the costs to the consumer, although such costs could be partly offset by any rebasing of the landfill tax rate by the Government and iii) an incineration tax would be contrary to many years of Government policy that has encouraged investment in EfW (e.g. through the PFI scheme and various green subsidies), including to assist the Government in ensuring that there is reliable, baseload power in the UK electricity market (being one component of the "energy trilemma").

It would be preferable for the Government to focus on preventing waste at source by supporting innovative recycling technologies and recycle end markets, over the introduction of an incineration tax. This would result in a greater alignment with the waste hierarchy and the EU's Circular Economy Package and would be a more favourable outcome for local authorities, businesses and consumers.

**Proposal 7:** *"continue to welcome further market investment in residual waste treatment infrastructure [but] ... particularly encourage ... progress technologies that produce outputs beyond electricity generation"*

**Ashurst's view:** Whilst this statement is broadly positive, it echoes the Government's policy on the Contract for Difference ("CfD"), where it is considering whether to only award future CfDs to such "progress technologies" in the "advanced conversion technology" category (e.g. gas-to-grid or renewable transport fuel production), having decided that EfW (with or without CHP) is ineligible for CfD support. Although it would be preferable for the Government to focus on making existing EfW technologies more efficient (as per its proposals on R1), this proposal may have a negligible impact on EfW facilities in development if more merchant waste projects are able to reach financial close without Government subsidies.

**Proposal 8:** *"Making the process for achieving 'end of waste' easier for businesses"*

**Ashurst's view:** This proposal, which appears to be another example of the Government supporting the penetration of recyclates into end markets, could bring greater clarity as to when APC/IBA residues reach end-of-waste status (at which point they will cease to be regulated as waste), but could potentially lead to higher costs if additional processing is required above and beyond existing best practice. The Government has not revealed much detail on this proposal but, if it decides to take an approach which is aligned with existing best practice, it could be an easy win and assist the Government in meeting future recycling targets. However, if the Government takes a more relaxed approach on end-of-waste for APC/IBA residues, there is a risk that this encourages lower cost co-incineration of waste which may lead to a less favourable environmental outcome.

**Proposal 9:** *"explore whether more stretching targets, over and above those proposed by the EU [in the Circular Economy], can be developed that will deliver the most effective approach to recycling"*

**Ashurst's view:** See the discussion on the potential impacts of proposals 1, 2 and 10.

**Proposal 10:** *"seeking legal powers for food waste targets"*

**Ashurst's view:** Similar to the discussion above in relation to proposals 1 and 2, there is no point implementing food waste targets which result in increased food waste tonnages if there is insufficient AD capacity – which is close to the source of the food waste and is designed for the specific wastestream – to process such tonnages. Whilst the Government has said in the Waste Strategy that it will "carry out and publish a review of policies to support bio-waste recycling through anaerobic digestion ...", it has recently slashed green subsidies that are available to AD under the RO and RHI. To provide much needed certainty to AD developers and investors, it would be helpful for the Government to reach a final view on whether or not it wants/needs to incentivise the development of suitable additional AD capacity.