

# Adapt to survive

**Waste sector businesses could face significant reputational and financial costs if they fail to adapt to the fast-evolving environmental, social and governance landscape, say Dentons' senior associate Laura Mackett and associate Sam Ahmad**

**T**o date, a lot of focus and commentary on environmental, social and governance (ESG) issues has been in relation to green finance and ESG investing, as well as the fossil fuel, mining, food and clothing industries.

But the waste sector, by its very nature, has always been close to ESG matters. Waste disposal clearly has a major environmental impact. Compliance with environmental regulation – from permits and licences to the duty of care – is at the heart of most waste businesses. Noise, pest and odour management have brought the sector into close relationships – and sometimes confrontation – with community stakeholders. The transient nature of some workforces has also presented challenges with modern slavery.

The waste sector is, therefore, well placed to deal with the disruption that a sharper societal and legal focus on ESG will have on its own businesses, and help its customers tackle the challenges this will bring.

Increased societal concern, driven largely by the growing effects and awareness of pollution and climate change, is bringing closer attention to the supply chains, labour practices and wider impact of corporates across all sectors.

Companies' social licences to operate are under threat. In this new world, the waste industry will come under pressure from three sides: government and regulators, via increased regulation and enhanced enforcement; media scrutiny and the demands of civil society; and customers, through contractual pressure to meet higher standards than prescribed by law.

Potential upcoming legislation, such as that on plastic packaging tax and deposit return schemes, may place additional burdens on waste companies.

Beyond this, as government tries to legislate to keep pace with the demands of civil society, it will be necessary for waste operators to ensure that assets requiring large capital expenditure do not become stranded investments. Demand for certain types of waste processing, recycling and disposal could disappear if the types and volumes of material used in packaging and products change dramatically as a result of legislative change and/or consumer, producer and retailer behaviour shifts. This could leave waste businesses with millions of pounds of redundant plant and equipment (at least in the UK), as well as being tied into long-term contracts that are no longer profitable.

International waste shipment controls are tightening. The Queen's Speech set out an intention to ban the export of plastic waste to non-Organisation for Economic Co-operation and Development (OECD) countries; China already has an import ban; and governments in Europe are considering regulatory measures, including taxes to cut waste imports. Business models reliant on waste imports and exports are clearly at risk.

Further, media coverage of the environmentally harmful outcomes of exported UK waste has led to a public outcry. It is not a far stretch to envisage producers and, potentially, processors and others in the waste chain being hit by severe reputational – and, in turn, financial damage – from identifiable (branded) recyclable packaging ending up in landfill and oceans worldwide, regardless of the legal liability position.

As public demand for environmentally and socially responsible products continues to grow, increased transparency and international tracking of waste flows will be in demand.

Consumers will want verifiable greener outcomes for their 'waste', such as reuse, repair or recycling.

If the waste sector starts to play a greater role in the full life-cycle of a product – for example, at the design and manufacture stage – it could find itself subject to wider product regulation. Large-scale digital tracking of waste will result in data management and data protection challenges.

While there are business opportunities and competitive advantages up for grabs in this fast-evolving ESG landscape, there could also be significant reputational and financial costs for waste sector businesses that do not adapt and evolve in time. ●

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