

NORTH LONDON WASTE AUTHORITY

REPORT TITLE:

KEY LEGISLATIVE CHANGES

REPORT OF:

HEAD OF WASTE STRATEGY AND CONTRACTS

FOR SUBMISSION TO:

AUTHORITY MEETING

DATE:

11th February 2009

SUMMARY OF REPORT:

This report advises Members of forthcoming and potential legislative changes including the finalisation of a revised Waste Framework Directive and the implementation of the Batteries Directive, a further consultation on which is outlined elsewhere on this meeting agenda. The report also outlines the implications of recent DEFRA guidance on interpreting the waste classifications in the current Controlled Waste Regulations and accordingly the types of waste for which the Authority is responsible. All the above potentially have implications for the Authority which are outlined in the report where known.

RECOMMENDATION

The Authority is recommended to note this report.

Signed by

.....

Date:.....

1.0 INTRODUCTION

This report outlines four areas of legislative change. The most significant aspects are set out below, and more detailed background is provided in the appendices.

2.0 WASTE FRAMEWORK DIRECTIVE

- 2.1 The Waste Framework Directive (WFD) sets the target in European law of reusing or recycling 50% of waste from households, and possibly from other origins as far as these waste streams are similar to waste from households, by 2020. There is also a target of reusing, recycling or recovering 70% of non-hazardous construction and demolition wastes.
- 2.2 National Governments have until December 2010 to pass their own legislation to ensure compliance with the targets, and the European Commission has the right to take national Governments to court for non-compliance with these targets.
- 2.3 The status of the “waste hierarchy” (reduce, re-use, recycle, recover, dispose) has been elevated to an explicit priority order, with clearer definitions given about when by-products become waste, when “recovery” is good enough not to be counted as “disposal”, and with extended producer responsibility provisions. These latter provisions enable National governments to be free to introduce legislative or non-legislative measures to require that producers, manufacturers, processors, treatment organisations or importers comply with a new form of extended producer responsibility. The intention is to strengthen incentives to reduce resource use or to reuse, recycle or recover wastes.
- 2.4 The UK Government clarified that the WFD requirements for separate collections of recyclable wastes would include the separate collection of commingled recyclable wastes for central sorting, as well as kerbside sorting.
- 2.5 The next key stage for the Authority will be the development of national legislation to turn these Europe-wide principles and obligations into practical services for local people.
- 2.6 Further European measures may follow in relation to the composting and/or anaerobic digestion of bio-wastes.
- 2.7 Further detail is attached at Appendix 1.

3.0 BATTERIES DIRECTIVE

- 3.1 Under the Batteries Directive the UK Government has already legislated for the nature of new batteries being sold and is now preparing legislation for the recycling of waste batteries.

- 3.2 The target performance under the Directive is for at least 25% by weight of portable batteries and accumulators (rechargeable batteries) to be collected separately for recycling by September 2012 and 45% by September 2016. This is a very challenging target as the current collection rate in the UK is estimated at between 2-3%. (WRAP, Household Battery Collection Trials Report, April 2005 – March 2008). Targets are also set for automotive and industrial batteries as part of the Directive.
- 3.3 There will be a number of competing compliance schemes following the model of waste packaging and waste electrical electronic equipment.
- 3.4 There is a separate report on this subject elsewhere on this agenda, as there is an on-going consultation. It is not expected, however, that any additional costs (other than potential administrative costs) will fall to the Authority.
- 3.5 Further detail is attached at Appendix 2.

4.0 **WASTE CLASSIFICATION**

- 4.1 At the April 2008 Authority meeting Members' attention was drawn to certain ambiguities or inconsistencies with regard to legislation classifying "household", "commercial" and "industrial" wastes. This matters to the Authority as these definitions determine what wastes the Authority and its constituent borough councils must or may treat, and therefore the magnitude of on-going future costs. The definitions also affect the calculation of reuse and recycling rates.
- 4.2 During 2008 the Head of Waste Strategy & Contracts (with other London municipal waste managers) has attended two meetings with regional representatives of the NHS to discuss hospital wastes in particular. Both "sides" are seeking to find solutions that will be equitable and that will lessen the environmental impacts of hospital wastes.
- 4.3 The Government has also launched a research project to quantify the real scale of the issue so that future policy can be as well-founded as possible. The Head of Waste Strategy & Contracts has fed into this process.
- 4.4 As work on these definitions develops it will be essential to bear in mind the other issue of the further definition of "municipal" waste (as reported to Members in April 2008 in the Legislation Update report), as this is the foundation of the Landfill Allowance Trading Scheme to deliver compliance with the Landfill Directive.

- 4.5 The Landfill Directive and corresponding UK legislation refers to “waste from households” and “similar” wastes, which our Government has then implemented as being all wastes under local authority control. The Government was legally challenged on this apparent discrepancy and subsequently consulted on the best way to bring clarity and certainty. The Authority gave its advice in response to the consultation and the published summary of responses showed us to be part of the majority view. The Government has not yet however been able to bring about the necessary change to primary legislation.
- 4.6 In the meantime, it should be noted that Waste Framework Directive reuse and recycling targets also refer to “waste from households” and “similar” wastes, so there appears to be a long-term case for ensuring that duties and corresponding services can be implemented, managed and measured to ensure that environmental impacts are indeed minimised or reduced in accordance with European directives, and that the legal and policy framework is sufficiently clear to provide the certainty that will be needed for financial investments and for minimising costs to council-tax payers.
- 4.7 As a result of the above work it is not anticipated that there will be immediate consequences for the Authority. Accordingly the Budget and Levy report elsewhere on this Authority agenda does not allow for any increase in the Authority’s tonnage as a consequence of changing definitions to municipal waste and an increase in the tonnage of municipal waste presented to the Authority as a result.
- 4.8 Further detail is attached at Appendix 3.

5.0 **CLIMATE CHANGE ACT**

- 5.1 The Climate Change Act (CCA) 2008 creates the first legally-binding national target for greenhouse gas (GHG) reduction in the world. It provides for a wide range of measures concerning reducing GHG emissions and adapting to climate change, including carbon-budgeting, target setting, trading schemes, financial incentives and renewable energy, and establishes a Committee on Climate Change to give on-going advice to the Government.
- 5.2 In relation to waste, the CCA enables the creation of designated “waste reduction pilot areas”. It also allows ‘the relevant national authority’, the Secretary of State in England, to make regulations for charges for single-use shopping bags, as previously campaigned for by London Councils, a stance which was supported by the Authority.
- 5.3 The Authority’s signature of the Nottingham Protocol in December last year has additionally set the framework for local activity on reducing our impact on the climate and adapting to climate change.

5.4 An integral part of reducing climate change impacts will be developing our ability to assess and measure current emissions arising from our activities so that we can take steps to actively mitigate these. To this end discussions have already started with our contractors to establish baseline data.

5.5 Further detail is attached at Appendix 4.

5.0 RECOMMENDATION

5.1 The Authority is recommended to note the contents of this report.

6.0 COMMENTS OF THE FINANCIAL ADVISER

6.1 The Financial Adviser has been consulted in the preparation of this report and has no further comments to add.

7.0 COMMENTS OF THE LEGAL ADVISER

7.1 The Legal Adviser has been consulted in the preparation of this report and has no further comments to add.

Local Government Act 1972 – Access to information

Documents used: [Directive 2006/12/EC of the European Parliament and of the Council](#) of 5 April 2006 on **waste** (this is the codified version of Directive 75/442/EEC as amended) – available at <http://ec.europa.eu/environment/waste/legislation/a.htm>

Position of the European Parliament adopted at second reading on 17 June 2008 with a view to the adoption of Directive 2008/.../EC of the European Parliament and of the Council on waste and repealing certain Directives – available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0282+0+DOC+XML+V0//EN#top>

[Texts adopted - Tuesday, 17 June 2008 - Revision of the framework directive on waste ***II - P6 TA-PROV\(2008\)0282](#)

‘Revision of the Waste Framework Directive – agreement reached’, LGA briefing paper, available at www.lga.gov.uk

Notification of publication of the revised Waste Framework Directive and adopted text as outlined in the Official Journal of the European Union, 22nd November 2008

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:312:0003:0030:EN:PDF>

Letter from Mark Shotton, Waste Framework Directive Unit, Defra, to Julia Barrett, County Surveyors' Society, 3rd December 2008

Directive 2006/66/EC of The European Parliament and of The Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/957/EEC – available at:

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_266/l_26620060926en00010014.pdf

Final Report, Household Battery Collection Trials, April 2005 – March 2008, WRAP. Available at

http://www.wrap.org.uk/downloads/Batteries_report_-_final.9e13a7b7.6153.pdf

Defra letter to English waste authorities on the classification and reporting of waste, October 2007

Climate Change Act 2008, Chapter 27. Available at http://www.opsi.gov.uk/acts/acts2008/ukpga_20080027_en_1

Environmental Protection Act, 1990, Chapter 43.

Available at

http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900043_en_1.htm

Energy Act 2004, Chapter 20. Available at:

http://www.opsi.gov.uk/Acts/acts2004/ukpga_20040020_en_1

Companies Act 2006, Chapter 46. Available at:

http://www.opsi.gov.uk/ACTS/acts2006/pdf/ukpga_20060046_en.pdf

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1. WASTE FRAMEWORK DIRECTIVE

1. The EU's 1975 Waste Framework Directive (75/442/EEC) provides the legal framework for all EU waste law and therefore establishes a framework for the management of waste across the European Community. It also defines certain terms, such as 'waste', 'recovery' and 'disposal', to ensure that a uniform approach is taken across the EU.
2. A revised EU Waste Framework Directive was adopted by the European Council of Ministers at a meeting on 20th October 2008 and officially became law on 12th December 2008. The UK and all other Member States have two years to transpose it into domestic legislation.
3. The revised Directive sets out a revised framework for waste management in the EU, aimed at encouraging reuse and recycling of waste as well as simplifying current legislation.
4. In revising the Directive the Council of Ministers agreed to support a range of amendments, which had been made by the European Parliament in June 2008. These amendments include:

Prevention Targets

5. A requirement for Member States to design and implement waste prevention programmes with waste prevention objectives five years after the Directive comes into force, (by the end of 2014). The European Commission will report periodically on progress concerning waste prevention.
6. An absolute prevention or stabilisation target was rejected.

Recycling Targets

7. A new target of 50% reuse and recycling of household waste “by 2020, the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from households and possibly from other origins as far as these waste streams are similar to waste from households shall be increased to a minimum of overall 50% by weight”.
8. A new target of 70% non-hazardous construction and demolition waste reuse, recycling and recovery by 2020 to be reached by all EU Member States.
9. If these targets are not met the Commission has the right to take national governments to court for non-compliance.

10. There was no agreement on a specific target for manufacturing and industrial waste but there is a requirement for the Commission to examine progress towards the identified targets outlined above (for waste from households and construction and demolition waste), by 2020 and set new targets for other waste streams if necessary.

Energy from Waste

11. A reclassification of energy-efficient incinerators as recovery operations rather than disposal (the energy efficiency formula is in Annex II to the Directive). The criteria effectively requires energy-from-waste facilities to operate at a minimum of 65% efficiency (for installations permitted after 31st December 2008 and 60% for installations in operation and permitted before 1st January 2009. In the UK, only 2 existing plants meet this criterion – Sheffield and Orkney; the Authority's current contractor is assessing its own performance, and is verifying how to apply key definitions to its own particular context. The energy efficiency criteria will be reviewed after six years.

Waste Hierarchy

12. Under the revised Directive, the five-stage 'waste hierarchy', which is designed to prevent and reduce waste production, is made more certain and comprehensive and moved to a more prominent place. (The hierarchy also permits energy-from-waste to be classed as 'recovery' rather than disposal, subject to the criteria outlined above). The hierarchy lays down an order of preference for waste operations:
 - Prevention
 - Reuse
 - Recycling
 - Other recovery operations e.g. energy recovery
 - And, as a last resort, safe and environmentally sound disposal.
13. The Directive confirms that Member States should treat the waste hierarchy "as a priority order" in waste prevention and management legislation rather than as a "guiding principle". Departing from the hierarchy may be possible where it is justified by "life cycle" thinking on the overall impacts of the generation and management of such waste.

Bio-waste

14. National governments are asked to take legislative or non-legislative measures to achieve the separate collection of bio-waste with a view to the composting and digestion of bio-waste.

15. The European Commission will also carry out a separate assessment on the management of bio-waste with a view to submitting new, separate legislation if appropriate. The assessment will consider whether minimum treatment standards and quality criteria need to be developed for compost and digestate. In the UK, WRAP has published Quality Protocols for both of these that define how to ensure compost and digestate are real products and no longer just treated waste.

Separate collection

16. Separate collection is defined as a waste stream that is kept separately by type and nature so as to facilitate a specific treatment, e.g. specific colours of waste glass may be kept separate to allow recycling back into glass containers of the same colour.
17. The Commission wants governments to set up separate collection for at least paper, metal, plastic and glass by 2014 – if it proves feasible according to the above criteria.
18. National government can take legislative or non-legislative measures to require separate collection of waste if it is technically, environmentally and economically practicable and will improve and ensure high quality recycling. However, as noted later in this report, the UK has also submitted a 'Minutes Statement' which would allow commingled collections too.

By-products

19. A new definition is introduced to help identify when a by-product becomes a product in its own right and therefore fit for use:
 - Further use of the substance or object is certain.
 - The substance or object can be used directly without any further processing other than normal industrial practice.
 - The substance or object is produced as an integral part of a production process; and
 - Further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

Extended producer responsibility

20. National governments will be free to introduce legislative or non-legislative measures to require that producers, manufacturers, processors, treatment organisations or importers of products they wish to prioritise have to comply with a new form of extended producer responsibility. The intention is to strengthen incentives to reduce resource use or to reuse, recycle or recover wastes.

21. This could include free take-back and an obligation to provide publicly available information as to the extent to which the product is reusable and recyclable.
22. The revised Directive also clarifies the notions of disposal as well as conditions of mixing hazardous waste. The Directive also contributes to legal simplification by repealing the current Waste Framework Directive (2006/12/EC), the Directive on Hazardous Waste (91/689/EEC) and part of the Directive on Waste Oils (75/439/EEC), replacing them all with one integrated Directive.

Clarification of requirements

23. There had been some uncertainty in the drafting of the revised Directive regarding whether the 50% household waste recycling goal, described in Article 11 of the Directive, would include green and food waste as contributions towards achieving the target and whether the target applies to paper, metal, plastic and glass individually, or as a combined total. In relation to the second point, the concerns specifically relate to paragraph 2 of Article 11, of the revised Directive, which states that:

"By 2020, the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from household and possibly from other origins as far as these waste streams are similar to waste from households, shall be increased to a minimum of overall 50% by weight."

24. A 'Minutes Statement' has been submitted by the UK Government as a result in order to clarify the situation. This Minutes Statement sets out how the UK intends to implement the recycling target for household waste. The Minutes Statement was cleared with the European Commission in writing before the Directive was adopted and makes clear that the UK intends to:

"apply to the totality of household waste¹ the requirement to increase, by 2020, to a minimum of overall 50% by weight, the preparing for re-use and the recycling of waste materials from households and, possibly, similar waste streams. The four waste streams specified in paragraph 2(a) of Article 11 (i.e. paper, metal, plastic and glass) would be included in that overall target where they originate from households, but the 50% target would not apply individually to each of the specified wastes." (Source: Letter from Mark Shotton, Defra Waste Framework Directive Unit to County Surveyors' Society, 3rd December 2008).

25. In clearing the UK Minutes Statement, the European Commission stated:

¹ It is uncertain whether the definition of 'household waste' referred to in the Minutes Statement will be according to the Controlled Waste Regulations as outlined in section 3 of this report.

“By ‘totality’ of wastes we understand the amount of both separately collected and mixed waste from these sources. Member States can add more material waste streams from [sic] household or similar wastes to this target (e.g. biowaste) in which case the 50% target would apply to the totality of all waste streams included”. (Source: Letter from Mark Shotton, Defra Waste Framework Directive Unit to County Surveyors’ Society, 3rd December 2008).

26. This means that green waste ‘recycling’ will count towards the revised Waste Framework Directive’s household waste recycling target provided that it is genuinely recycling within the meaning of that term, which is defined in the Directive as follows:

“‘recycling’ means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations.”

Key Implications for the Authority

27. The key implications for the Authority relate to the UK’s interpretation of the recycling targets contained within the Directive as outlined above.
28. The clearance by the European Commission outlined in paragraph 25 above ensures that commingled collections of recyclables will be allowable after 2015 and Minutes Statement itself confirms that green garden and food waste will be included within the 50% household waste reuse and recycling target within the UK. The Minutes Statement also leaves the UK with an opportunity only to apply the 50% target to household waste, excluding ‘waste from other origins as far as these waste streams are similar to waste from households’. It may however introduce other waste streams (e.g. charities and schools) that are household waste under the Controlled Waste Regulations in the UK as noted in footnote 1 above.
29. A consultation document on how the UK Government intends to implement the Directive in the UK is anticipated later this year and this is clearly an evolving area of law which is subject to change. As this progresses further, information will be supplied to Members.
30. The majority of the other changes to the Directive are already enshrined within Waste Strategy 2007, the national waste strategy for England and therefore already accounted for within national and regional policy and strategy making and therefore taken into account in the North London Joint Waste Strategy approved at the June 2008 Authority meeting.

BATTERIES DIRECTIVE

1. At the end of September 2008, the first of two sets of regulations to implement the EU Batteries Directive in the UK came into force. The first set of regulations is known as the “Batteries and Accumulators (Placing on the Market) Regulations 2008”. These regulations cover the requirements for all new batteries placed on the market after 26th September 2008.
2. The second set of regulations covering the collection, treatment and recycling of waste batteries has however been delayed and it is these which will potentially have most impact on the Authority. A consultation document on the same was issued on 22nd December 2008 with a deadline for response of 13th February 2009. A separate report, including a draft Authority response to the consultation is included elsewhere on this Authority agenda.
3. The target performance under the EU Batteries Directive is for at least 25% by weight of portable batteries and accumulators (rechargeable batteries) to be collected separately for recycling by September 2012 and 45% by September 2016. This is a very challenging target as the current collection rate in the UK is estimated at between 2-3%. (WRAP, Household Battery Collection Trials Report, April 2005 – March 2008). Targets are also set for automotive and industrial batteries as part of the Directive, as outlined in the table below.

Type of battery	Banned from landfill and incineration by 2009	Amount to be separately collected for recycling		
		By:	2009	Sept. 2012
Portable	Only if collected separately	No target	25%	45%
Automotive	Yes	100%	100%	100%
Industrial	Yes	100%	100%	100%

4. Some aspects of the Batteries Directive’s implementation into the UK have already been agreed as follows:
 - A decision by DEFRA and BERR to opt for a multiple compliance scheme model rather than a single scheme approach. This means that there will be a number of compliance schemes, as is the case already for packaging and waste electrical and electronic equipment (WEEE). These compliance schemes will take on the responsibility for battery producers of collecting the required amount of material to meet the targets in the Directive.

- Each compliance scheme will also be able to choose what collection methods it wants to fund, be that kerbside collection, retailer take-back, community drop-off sites or collection via reuse and recycling centres (as in the case of WEEE).
 - A decision not to have a central co-ordinating body appears to have also been made by government (but the Authority recommends that communication should still be centrally co-ordinated).
5. In addition to the above the Waste and Resources Action Programme (WRAP) has also been undertaking some battery collection trials, the outcomes of which are summarised here for information. One of the Authority's constituent boroughs, Camden, took part in the trials.

WRAP Household Waste Battery Collection Trials

6. In order to help assess the most appropriate method of collecting waste household batteries, in order to meet the requirements of the Batteries Directive, WRAP conducted a series of trials of different household battery collection systems. Five different collection methods were trialled, namely kerbside collection, retailer take-back, community drop off points, postal 'collections' and collection via the NHS and fire service.
7. All types of household batteries except car (lead-acid) batteries were collected in the trials. After collection the batteries were delivered to G&P Batteries in Derbyshire for sorting into the various types based on chemical composition and then sent to be recycled (mostly abroad as there is only one small plant in the UK). The trials were supported by funding from DEFRA's Business Resource Efficiency and Waste (BREW) Programme and are part of a wider effort to develop cost-effective ways for the UK to meet the requirements of the EU Batteries Directive.
8. A final report on the trials was published in November 2008. The report concludes that a mix of collection options will be needed to reach the 2012 and subsequent targets for battery recycling and that although local authorities are not obligated by the Directive, they should be encouraged to collect batteries.
9. The trials also showed that the retailer take-back approach which was initially thought likely to be the most effective collection scheme was not the most popular, and additionally it did not produce the highest capture rates. The kerbside collection trials collected the greatest amount of batteries, however, because batteries are classified as both hazardous waste and dangerous goods, batteries need to be kept separate at the point of collection and that separation needs to be maintained until they are delivered to a depot, treatment plant or sorting facility. This means that separate containers need to be included on vehicles if they are to be collected alongside commingled recyclable collection schemes. (They cannot be mixed in with the rest of the commingled material). It is not anticipated however that any additional costs of including separate containers for batteries on collection vehicles would be borne by local authorities, a point which is outlined in paragraph 11 below.

Implications for the Authority

10. In the face of uncertainty regarding collection methods and the delay in implementing the collection requirements of the Batteries Directive it is difficult for officers to advise on a preferred way forward. However as an initial approach it is envisaged that the constituent boroughs and the Authority might seek to work with a single compliance scheme across North London to implement a collection infrastructure that possibly consists of more than one collection system. (There is no suggestion at this stage that different local authority areas will be allocated to particular compliance schemes, as was the original proposal for WEEE compliance, so the constituent boroughs would be potentially free to work with any one of the battery compliance schemes for the collection of material). However, given the relatively low unit weight of batteries and therefore the possible need to have a more extensive and intensive collection system than is in place for WEEE, it will be important to ensure that any approach provides adequate coverage across the whole of the North London area and it will be necessary to determine for any commingled collection services procured in the short term, how batteries might be accommodated. The tonnage of batteries collected through any expanded system will contribute towards national and regional recycling targets and indicators.

Additional costs

11. The WRAP Battery Collection Trial report concludes that the Batteries Directive is a producer responsibility directive and local authorities should not expect to bear the costs of collecting batteries. The report notes that a mechanism will be needed to reimburse local authorities for their additional costs of implementing battery collections, but at the same time local authorities will need an incentive to manage total costs effectively. The WRAP report suggests that this could be achieved by separate negotiation between compliance schemes and individual authorities or through a central negotiation with national or regional representatives of local authorities. For simplicity the report suggests that a single national figure per collected tonne could be agreed with LARAC, or another similar body, and if local authorities wished to participate at this level they could do so. It is therefore anticipated that wherever any additional costs might arise as a result of this legislation, for the public purse the effect would be cost neutral.
12. Further updates on the implementation of the Batteries Directive and its implications for North London will be reported as and when they arise and as already noted above, a draft response to the most recent consultation document on the same is included elsewhere on this Authority agenda.

WASTE CLASSIFICATIONS

1. As reported at the April 2008 Authority meeting the Government wrote to the Chief Executives of all English waste authorities in October 2007, clarifying their interpretation of various waste-related parts of the Environmental Protection Act 1990, the Controlled Waste Regulations 1992 and the Household Waste Recycling Act 2003, all as amended. This letter was sent in response to a request from the Audit Commission for clarification of the Controlled Waste Regulations; to the Ministry of Defence in response to a request to investigate differences in the approach taken by authorities in collecting waste; and to concerns raised by a number of voluntary organisations at the variation in the way they are treated by waste authorities. A copy of the DEFRA letter and London Councils' response were attached as appendices to the April 2008 Authority report entitled 'Legislation Update'.
2. A key aspect of the letter as outlined in the April 2008 Authority report was that DEFRA sought to clarify their interpretation of the Controlled Waste Regulations (CWR) that refer to three sorts of 'controlled waste': 'household', 'industrial' and 'commercial'; and in relation to 'household waste' DEFRA sought to confirm their interpretation of the two categories of household waste:
 - those household wastes that are to be collected and disposed of free of charge (i.e. funded by the council tax)
 - those for which a charge for collection may be made, but not a charge for disposal.
3. 'Industrial' and 'commercial' waste are all to be fully paid for directly by their producers, but whereas waste collection authorities have no duties in relation to 'industrial' waste (only powers), they do have a duty when requested to arrange for the collection of 'commercial' wastes at a reasonable cost. Waste disposal authorities then have similar powers in relation to industrial wastes (and can refuse that waste collection authorities collect such wastes), but have a duty to arrange for the disposal of commercial wastes collected by the waste collection authorities in their areas. The Environmental Protection Act and the CWR are the principal statutory means that define which wastes fall into which category.
4. In relation to the perceived ambiguities the Government said that it believes:
 - i) waste from churches and places of worship should be collected and disposed free of charge, but waste from functions or activities where buildings have been hired out for other activities not connected with the conduct of religious worship should be treated as commercial waste.

- ii) all waste arising from premises forming part of a school, university or other educational establishment (private or public), a hospital or nursing home should be treated as household waste (and no charges made), except clinical wastes, construction and demolition wastes, wastes arising from sub-let areas such as snack bars or book shops and from halls of residence rented outside of term time where this was captured by the Hotel Proprietors Act 1956 (s.1(3)), in which cases the wastes would be 'commercial' or 'industrial', and therefore fully chargeable.
- iii) At caravan and camp sites waste from mobile homes and caravans used as permanent homes should be collected completely free of charge; waste from tents, caravans and chalets used for holiday accommodation should receive free disposal, but a collection charge may be made; and waste from commercial facilities such as shops, bars and restaurants is fully chargeable.
- iv) waste from charity shops is household waste for which a charge may be made for collection, but not for disposal.
- v) waste from all parts of a prison is household waste for which a charge may be made for collection, but not for disposal.

DEFRA Interpretation of the Household Waste Recycling Act

- 5. The Government has said that the duty on waste collection authorities to collect at least two types of recyclable waste separately from the rest of household waste from all households by the end of 2010 applies also to all sources of household waste for which a collection charge may be made such as residential hostels, prisons and charities. All such wastes will count towards the Authority's household waste recycling and composting performance indicators.

DEFRA Disclaimer

- 6. At the end of the letter the Government reminds local authorities that the views expressed in the letter are those of DEFRA. The letter says it is for waste authorities to have regard to the guidance in exercising their relevant functions, but that ultimately it will be for the courts to interpret the law, so waste authorities should seek their own legal advice if taking issue with DEFRA's interpretation.

Progress since April 2008 and implications for the Authority

7. In North London, officers estimated on the basis of preliminary indications from constituent boroughs, that the additional tonnes per year which might be presented to the Authority for disposal as a result of the clarification of the definition of household waste may be less than 2,000, representing an additional direct cost of some £120,000 p.a. It was also estimated that the clarification of definitions could lead to a possible creation of a similar additional LATS burden (although at fine levels, this would be £300,000 p.a.).
8. Since the April Authority meeting both the Local Government Association and London Councils have been in discussion with DEFRA about the letter and the interpretation of household waste in particular as for some authorities the interpretation could result in considerable additional tonnages coming into authorities' waste streams.
9. As a result of the letter, a hospital within the Authority's area has also subsequently requested the collection of household waste by their borough. This collection would not include some types of waste including clinical and laboratory wastes. However, if collected, this waste would fall to the Authority for disposal.
10. The amount of this additional waste from hospitals, prisons and universities is at present unknown. Authority officers and borough colleagues have been working together to resist the collection of this additional material on the following grounds:
 - Many of the hospitals and prisons in the Authority's area are sub-regional establishments serving residents from a much broader catchment area and therefore North London tax payers should not be paying the bill for processing and disposing of the waste from these premises; moreover, under the tonnage-based levy arrangements, individual boroughs would subsequently bear the costs (and national indicator impacts) of nationally managed public services with catchment areas far greater than the borough in which they are situated.
 - That within the context of the revised Waste Framework Directive which puts greater emphasis on producer responsibility we would suggest that hospitals, universities and prisons are best placed to manage these wastes and take responsibility for the waste that they produce.
 - That local authorities have not budgeted for the costs of handling and processing this additional waste; any move to make local authorities take on the responsibility and costs of this waste should be subject to a future spending review, i.e. with additional funds transferred to local authorities to handle it if this is the requirement.

11. In the meantime, DEFRA is commissioning work on the meaning of the Controlled Waste Regulations both in practice and in legal terms, and the tonnage implications of any changes. In relation to the implications of this work to NHS wastes, NHS representatives have indicated they are content to await the outcome of the research and also that they are keen to engage with local authorities to learn lessons on segregation and recycling in particular. Whilst uncertainty remains on the definition of “municipal waste” with regard to the Waste Framework Directive, the WET Act and LATS, where different interpretations are applied it is not anticipated that any changes to definition, should they be agreed, would be immediate. Accordingly the Authority has not made any specific provision in next year’s budget for any additional waste being presented to the Authority as a result of changes to the definition of municipal waste as outlined above.

CLIMATE CHANGE ACT

1. The Climate Change Act² received Royal Assent on Wednesday 26th November. The Act and its implications for the Authority are summarised below.
2. The Climate Change Act has been put in place in order to set a target and establish implementation measures which will bring about a reduction in greenhouse gas emissions from the UK by 2050. The Act covers the following 'greenhouse gases' – carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆). For the purposes of the Act greenhouse gas emissions, reductions of such emissions and removals of greenhouse gas from the atmosphere will be measured or calculated in tonnes of carbon dioxide equivalent. The Act also:
 - Provides for a national system of carbon budgeting (in order to set interim targets and measure progress towards these).
 - Establishes a Committee on Climate Change to advise the government.
 - Confers powers to establish trading schemes for the purpose of limiting greenhouse gas emissions or encouraging activities that reduce such emissions or remove greenhouse gas from the atmosphere.
 - Makes provision about adaptation to climate change
 - Confers powers to make schemes for providing financial incentives to produce less domestic waste and to recycle more of what is produced and to make provision about the collection of household waste.
 - Confers powers to make provision about charging for single use carrier bags.
 - Amends the provisions of the Energy Act 2004 about renewable transport fuel obligations.
 - Makes provision about carbon emissions reduction targets.
 - Makes other provision about climate change and for connected purposes.

² The Authority's draft response to the consultation on the bill, now Act, was approved with amendments at the Authority meeting of 27th June 2007.

Carbon budgeting and trading

3. A large part of the Act relates to the system of carbon budgeting, (budgets will be set for each succeeding period of five years beginning with the period 2008-2012) and reporting on progress. In addition, part three of the Act relates to the provision of trading schemes. Trading schemes may apply to a range of activities that are regarded as indirectly causing or contributing to greenhouse gas emissions, in particular: consumption of energy, the use of materials in whose production energy was consumed, the disposal otherwise than for recycling of materials in whose production energy was consumed, or the production or supply of anything whose subsequent use directly causes or contributes to greenhouse gas emissions.

Waste incentive trial areas

4. Part five of the Act relates to waste reduction schemes and specifically amends the Environmental Protection Act 1990 (c.43) in order to provide the means by which five areas may be designated as 'waste reduction pilot areas'. Powers for five councils to trial financial incentive recycling schemes were included, following campaigning by bodies such as the Local Government Association (LGA) who had lobbied for powers to be awarded to local authorities to enable them to reward residents who recycle and charge those who do not. However, no local authorities have since applied to be permitted to run such schemes as provided for in the Act.
5. The Climate Change Act also provides for an interim report on the waste reduction pilot areas to be produced within three years of the Act commencing, i.e. by 26th November 2011; this will clearly depend on whether any local authorities decide to operate such schemes in the future.
6. Following completion of the trials in one or more pilot areas, the Act enables the Secretary of State to amend the provisions for incentive trials and also to allow them to come into force generally either with or without any amendments.

Charges for single use carrier bags

7. Part five of the Climate Change Act also makes provision about charges for single use carrier bags. It confers power on the relevant national authority³ (in England, Wales or Northern Ireland) to make regulations about charges for single use carrier bags.

Other aspects of the Act including company reporting

8. In addition to the above, the Act also contains some additional amendments and requirements that are relevant to the Authority:

³ In the Act 'national authority' means any of the following: the Secretary of State, the Scottish Ministers, the Welsh Ministers, and the relevant Northern Ireland department. Functions conferred or imposed by this Act on 'the national authorities' are to be exercised by all of them jointly.

- The Act makes it a requirement that by no later than 6th April 2012, the Secretary of State will make regulations under section 416(4) of the Companies Act 2006 (c.46) requiring the directors' report of a company to contain such information as may be specified in the regulations about emissions of greenhouse gases from activities for which the company is responsible, or if not, to provide a report explaining why no such regulations have been made.
- Secondly the Climate Change Act contains amendments to the provisions of the Energy Act 2004 (c.20) relating to renewable transport fuel obligations that may have the effect of requiring more information from fuel suppliers and therefore increasing the costs of transporting wastes which would then increase the Authority's overall costs.
- Thirdly, the Act inserts an additional sentence into section 46 of the Environmental Protection Act 1990 (c.43) which confirms that a waste collection authority is not obliged to collect household waste that is placed for collection in contravention of their requirements relating to waste receptacles. This has the effect of confirming the situation regarding compulsory recycling in particular and that the collection authority concerned does not need to collect materials from a householder if they are presented in an incorrect container.

Implications for the Authority

9. The main implications for the Authority of the Climate Change Act will not materialise for a couple of years, but can be expected to be beneficial in terms of potentially reducing waste volumes and potentially increasing the level of greenhouse gas emissions reporting information to be provided by the Authority's contractors and making it a requirement for them to do so.
10. The outcome of the recycling incentive trials in particular could have an impact on total waste volumes, if any incentive schemes are implemented and if they are then rolled out further in the future and some of the boroughs in the Authority's area participate. However, until any first trial areas commence and the trials are well underway it is not possible to assess the possible impact on the Authority should incentive schemes be extended.
11. Provisions to enable charging for single use carrier bags are likely to have less of an impact in tonnage terms than incentive schemes and as a number of retailers are already taking voluntary action on single trip carrier bags.
12. Going forward, any proposals to require companies to report on their greenhouse gas emissions in their annual reports would also be useful for the Authority as data on greenhouse gas emissions needs to be provided to the constituent borough councils to enable them to report on National Indicator, NI 186 (per capita reduction in CO2 emissions in the local authority area) and currently this information has to be requested separately from contractors and potentially in future incorporated into contractual terms.

REPORT ENDS