

**NORTH LONDON WASTE AUTHORITY**

**REPORT TITLE:**

**A CONSULTATION ON CONTROLS ON THE HANDLING, TRANSFER AND  
TRANSPORT OF WASTE**

**REPORT OF:**

**HEAD OF WASTE STRATEGY AND CONTRACTS**

**FOR SUBMISSION TO:**

**AUTHORITY MEETING**

**DATE:**

**7th February 2007**

**SUMMARY OF REPORT:**

This report provides details of a DEFRA consultation on proposals to revise the controls on the handling, transfer and transport of waste and outlines a draft response to the consultation.

**RECOMMENDATIONS**

The Authority is recommended to:

- i) Approve the draft response to this consultation outlined in Appendix 1.
- ii) Note that further updates on proposed changes and potential implications for the Authority will be reported at future meetings.

**Signed by Head of Waste Strategy  
and Contracts**

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**Date:** .....

## **1.0 BACKGROUND AND INTRODUCTION TO THE CONSULTATION**

- 1.1 This new consultation from DEFRA is about proposed changes to the current system of controls which regulate the way in which waste is handled, contained, transferred and transported. The consultation pack consists of five separate documents:
- An introduction to the consultation
  - A consultation on proposed revisions to the 'Duty of Care'
  - A consultation on proposed revisions to the Registration and Control of Waste Brokers
  - A consultation on proposed revisions to the Registration of Waste Carriers
  - An Initial Regulatory Impact Assessment of the above.
- The consultation documents refer respectively in broad terms to the controls on handling, transfer and transportation.
- 1.2 The consultation does not make detailed proposals for potential changes to the regulations, but requests comment on aspects of the regulations where change is being considered and asks for comment and suggestions regarding potential amendments. A separate more detailed consultation will follow once the results of this initial consultation have been considered and evaluated.
- 1.3 The introduction to the consultation documents states that the 'consultation pack' should be read by anyone who produces, handles, deals with or transports waste; the waste management industry; local authorities at all levels; anyone who handles waste and/or acts as a broker and the Environment Agency.
- 1.4 The report which follows is organised and divided as per the above five documents included in the consultation pack and highlights the key aspects of each. Appendix 1 is a draft response to the consultation which the Authority is recommended to approve.

## **2.0 INTRODUCTION**

- 2.1 The key driver behind this consultation and proposed revisions to the controls on the handling, transfer and transport of waste is evidence of an increase in and a recognition of the negative impacts of waste crime and fly-tipping in particular. Data from Flycapture, the national fly-tipping database in 2005/06 shows that local authorities and the Environment Agency are currently spending £50 million a year in clearance costs alone and that if the costs of enforcement and private landowners' clearance costs are also taken into consideration, then the consultation introduction says that the real costs of fly-tipping could be as high as £100 million per annum.

- 2.2 The impacts of the increase in waste crime also include:
- a reduction in the quality of the local environment
  - both cost and aggravation for landowners, the Environment Agency and local authorities
  - pollution of the environment and sometimes risks to human health
  - undermining the legitimate waste management industry.
- 2.3 Fifty one percent of fly tips handled by local authorities are of household waste and 86% of fly tipping takes place in urban areas.
- 2.4 DEFRA has recently published a research report by the Jill Dando Institute of Crime Science, University College of London<sup>1</sup>. This showed that, at a national level, waste carrier registration arrangements, duty of care responsibilities and penalties for fly-tipping all provided sufficient opportunities for people to consider that the risks of waste crime were worth taking when balanced against the rewards and potential penalties if caught.
- 2.5 The Government has also been working closely over recent years with the Environment Agency and the Local Government Association in England to develop and implement its Fly-Tipping Strategy which aims to:
- Ensure better prevention, detection and enforcement of fly-tipping and other forms of waste crime.
  - Make existing legislation more usable and effective.
  - Extend the range of powers available to the regulating authorities so that the Environment Agency and local authorities can be more flexible when dealing with all forms of illegal waste activity.
  - Improve the data and knowledge base so that resources can be targeted to where they can be most effective at reducing illegal waste activities.
  - Ensure the Environment Agency and local authorities can do their job as effectively as possible and that waste producers and others handling wastes take responsibility for having the waste legally managed.
- 2.6 In recent years the Government has brought forward changes to primary legislation in:
- The Anti-Social Behaviour Act, 2003
  - The Clean Neighbourhoods and Environment Act, 2005

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<sup>1</sup> Fly-tipping: Causes, Incentives and Solutions, Jill Dando Institute of Crime Science, University College of London, 31 May 2006. [www.defra.gov.uk/environment/localenv/flytipping/research/index.htm](http://www.defra.gov.uk/environment/localenv/flytipping/research/index.htm)

- 2.7 According to the consultation introduction this legislation has started the process of modernising, updating and broadening the powers that are available to the enforcing authorities and the sentencing provisions that are available to the courts. These Acts have also introduced a more flexible range of penalties which reflect the seriousness of various waste offences. The Government is now moving on to reviewing, simplifying and modernising the secondary legislation that applies to waste crime with the following aims:
- To reduce waste crime, including fly-tipping and improve environmental protection.
  - To make it easier for businesses to understand and comply with the regulations.
  - To make it easier for the enforcing authorities to use.

### **Next Steps and New Regulations**

- 2.8 Following response to this consultation the Government, as already mentioned, will refine its proposals and will consult for a second time on firmer proposals, draft regulations and a more complete partial Regulatory Impact Assessment. It is intended that the outcome of this review will be one set of new regulations that will consolidate, modernise and replace the following. At this stage the scope and implications of such consolidation is unknown:
- The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991, as amended.
  - The Environmental Protection (Duty of Care) Regulations 1991, as amended.
  - Paragraph 12 of Schedule 4 of the Waste Management Licensing Regulations 1994.
  - Schedule 5 of the Waste Management Licensing Regulations 1994.
  - The Waste (Household Waste) Duty of Care (England and Wales) Regulations 2005.
- 2.9 The next three sections of this report (3 to 5) take the three main consultation documents in turn, (Duty of Care, Registration and Control of Waste Brokers and the Registration of Waste Carriers), summarise and review the main points in each and highlight the issues of concern to the Authority. It should be noted that the proposed changes, if implemented, would have a greater impact upon the constituent borough councils as collection authorities than upon the Authority.

### **3.0 PROPOSED REVISIONS TO THE DUTY OF CARE**

- 3.1 The waste *duty of care* regime is set out in Section 34 of the Environmental Protection Act 1990. The regime is one of the main ways of ensuring that all those who produce and handle waste do so responsibly. The regime requires those who produce and handle waste to contain it correctly. It also requires that those involved ensure that the waste is transported by appropriately registered waste carriers, is only transferred to authorised persons and that it is sent to suitably licensed or exempt facilities for recycling, treatment or disposal. A set of paperwork has to be completed (although this is increasingly carried out electronically) every time that a consignment of waste moves from one place to another, although in practice, where the same type of waste is repeatedly moved in the same way and between the same parties it is acceptable for an annual 'transfer' note or 'season ticket' to be completed.
- 3.2 The Authority's Contracts Team ensures that the necessary paperwork is in place between the constituent borough councils and the Authority's contractors for all waste transfers of municipal waste involving the Authority. The 'transfer notes' which regularise all such movements of waste from one 'holder' to another, describe the nature of the waste as well as details of the person collecting the waste and where it is being taken to. Every person in the chain shares responsibility for the waste when it is in their care, although it is ultimately the waste producer who holds the duty of care for ensuring that the waste they produce is handled, transported and treated or disposed in a manner which complies with the legislation.
- 3.3 In 2005 the Waste (Household Waste Duty of Care) (England and Wales) Regulations extended the duty of care to householders in relation to household waste produced on domestic premises. Householders are now required to take all such measures available as are reasonable in the circumstances to ensure that any household waste produced on their property is transferred only to an authorised person or to a person for authorised transport purposes. The requirement to obtain and keep waste transfer notes does not apply to householders.
- 3.4 The Government is putting forward a number of proposals for changing the existing duty of care regime. The main reasons for wanting to change the regime are as follows:
- Lack of awareness of and therefore compliance with the regulations by small and medium sized enterprises (SMEs). A survey carried out by the Environment Agency in 2003 showed that 76% of SMEs had not heard of the duty of care thirteen years after its introduction and the same survey in 2005 similarly showed that 86% of SMES could not name any environmental legislation unprompted.
  - The Government also wants to revise the duty of care regime so that it:
    - Is easy to understand and promotes compliance.
    - Is simpler and easier for the enforcing authorities to use.
    - Provides an effective waste audit trail.

- Ensures that waste is managed, recovered or disposed of in ways which protect the environment and human health.
- The aim of the revisions is also to lead to a reduction in waste crime and illegal waste shipments into and out of the UK and an improvement in environmental protection.
- It is also hoped that by revising the duty of care regime that there will be reduction in the mis-description and mis-management of wastes.

3.5 The Duty of Care consultation document poses 24 detailed questions relating to the current operation and implementation of the duty of care regime. These questions cover such aspects as incentives and promotion to raise awareness and encourage greater compliance, to how the duty of care regime and particularly the paperwork might be adapted to enable compliance with additional new legislative requirements and therefore keep the overall administrative regime as simple as possible.

3.6 The draft Authority response in Appendix 1 provides a suggested response to the key points which are relevant to the Disposal Authority. It is anticipated that any changes would require minor amendments to the Authority's existing paperwork and would require at least six week's notice to implement.

#### **4.0 PROPOSED REVISIONS TO THE REGISTRATION AND CONTROL OF WASTE BROKERS**

4.1 The Waste Framework Directive<sup>2</sup>, Article 12 requires that establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others, (dealers or brokers) must be registered with the competent authorities. Although there is no legal definition of a 'broker' the Waste Framework Directive suggests that a broker has the following characteristics:

- That they do not have physical possession of the waste with which they are dealing.
- That they act on behalf of someone else.

4.2 There are a number of reasons why the way in which waste brokers are regulated needs to be reviewed according to the consultation document. The first and most important reason is because there is some confusion about the definition of a waste broker and therefore who needs to register and comply with the legal requirements. Knowledge and evidence is also lacking about the quantities, movement and destinations of waste that brokers handle and there is no requirement for brokers to keep any records.

4.3 The consultation document asks 13 questions relating to how brokers might be better regulated, including questions about what jurisdiction the Environment Agency has over trans-boundary waste brokering activities as the power for the Environment Agency to monitor or regulate UK brokers who are operating abroad or overseas brokers operating in the UK is very unclear.

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<sup>2</sup> Directive 2006/12/EC of the European Parliament and of the Council on Waste

4.4 The draft Authority response enclosed in Appendix 1. It makes comment where relevant on the proposals.

## 5.0 PROPOSED REVISIONS TO THE REGISTRATION OF WASTE CARRIERS

5.1 The waste carrier registration regime in England and Wales requires any person who transports controlled waste in the course of their business or otherwise with a view to profit, to be registered with the Environment Agency. Registration as a waste carrier costs £140 for three years and subsequent renewals £96 for each further three year period. The Environment Agency maintains a public register of waste carriers<sup>3</sup>.

5.2 The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 includes some exemptions from the requirement to be registered as a waste carrier. The most significant of these exemptions are:

- When the producers of waste carry their own waste, except where it is building or construction waste.
- Waste disposal and collection authorities such as the Authority and its constituent borough councils.
- A person who transports waste only from a mine, quarry or from agricultural premises.
- Charities.
- Voluntary organisations.

5.3 Further regulations (The Waste Management (England and Wales) Regulations 2006) made some additional minor changes and further amended the exemption list to include the following:

- A person who transports controlled waste which comprises only animal by-products collected and transported in accordance with certain regulations.

5.4 In addition to the above changes, additional registration requirements were brought in under the Waste Management Licensing Regulations 1994. These required exempt organisations in the list above to register if they carry waste on a *professional* basis, (the relevant authorities maintain a list of 'professional collectors, transporters, dealers and brokers of waste'). However, these exempt organisations are not required to pay the registration charge. Carrying waste 'on a professional basis' excludes organisations 'for whom the transport of waste is solely incidental to their main business and is not a significant part of their business', (DOE Circular 11/94).

5.5 As a result there are two waste carrier regimes in operation:

- One for those organisations who are required to register under Section 1 of the 1989 Control of Pollution (Amendment) Act who pay a registration charge to the Environment Agency.

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<sup>3</sup> This can be viewed at <http://www.environment-agency.gov.uk/publicregister>

- A second for those who are required to register as *professional carriers*, under paragraph 12(1) of Schedule 4 to the 1994 Regulations, but who are not required to pay the charge.
- 5.6 This leaves producers of waste, except for building and construction waste, and those who do not carry waste on a professional basis totally exempt from the requirement to register.
- 5.7 One of the main reasons that the registration of carriers regime needs to change is because the regime applies equally to large and small businesses. It takes no account of the number of vehicles that a business operates, the size of the vehicles or of the quantity or nature of the wastes being carried.
- 5.8 The Jill Dando Institute of Crime Science at the University College of London also found<sup>4</sup> that six out of ten businesses that they interviewed could not see the value of registering as a waste carrier and many of those interviewed did not know that they needed to register.
- 5.9 A further reason to review and change the regime is because the Government needs to further amend the list of those who are currently exempt. This follows a European Court of Justice ruling on an infraction case against the Italian Government on 9<sup>th</sup> June 2005. As a result of the Italian infraction case, those who now need to register may also include those who are *not* professional carriers but in the course of their own business activity transport waste which they have produced. The implication of this is that although the transport of waste might be incidental to an undertaking's main business, the undertaking may still be deemed to be transporting 'on a professional basis'. This means that, for example, farmers previously not caught by the waste regulations may now be if they transport their own waste in these circumstances.
- 5.10 The Government also needs to change its guidance on what is meant by 'professional basis' so that it includes those that 'in the course of their activities, normally and regularly transport waste, whether that waste is produced by them or by others'. The consultation document says that the Government considers that a 'professional basis' does not include individual householders moving their waste from their home to a waste management facility.
- 5.11 The consultation document states that the other drivers to change the regime are that the Government wants to deliver a simplified and modified regulatory regime which is easier to understand, comply with and regulate; and that it wants a system which acts as an effective control that helps to reduce waste crime and improve environmental protection.

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<sup>4</sup> Fly-tipping: Causes, Incentives and Solutions, Jill Dando Institute of Crime Science, University College London, 31<sup>st</sup> May 2006. [www.defra.gov.uk/environment/localenv/flytipping/research/index.htm](http://www.defra.gov.uk/environment/localenv/flytipping/research/index.htm)

- 5.12 The consultation document contains 19 questions which include questions about whether there should be a tiered registration system to take account of the different sizes of the organisations registering, whether the 3-year registration system should be altered to a 'registration for life' regime with annual subsistence charges and whether the offences and penalties for failure to comply with the regulations should be altered. A draft response to some of these questions is included in Appendix 1.

## **6.0 INITIAL REGULATORY IMPACT ASSESSMENT**

- 6.1 The initial regulatory impact assessment outlines the costs and benefits of the proposed changes, although as this is an initial regulatory impact assessment it does not include any detailed modelling of the potential impact of different scenarios. More detailed work will be carried out for the second stage of the consultation.

## **7.0 IMPLICATIONS FOR THE AUTHORITY**

- 7.1 The implications for the Authority of these proposed changes if adopted are likely to be relatively minor and would principally involve minor changes to the Authority's paperwork as follows:
- Minor amendments to the information contained in duty of care paperwork and particularly waste transfer notes, although these changes are more likely to impact upon the Authority's contractors and the constituent borough councils.
  - Potentially greater awareness and regulation of all organisations involved in waste handling, transfer and transport, including exports.
  - Potentially increased costs of operation of the Authority's contractors, especially if a tiered system of charging for registration of carriers is introduced, (based upon the number of trucks of the amount and type of waste handled), although the potential financial impact of this on the Authority is unknown at this time.
- 7.2 Any changes are unlikely to impact until financial year 2008/09 and although the changes may have some financial implications for the Authority during that year, at this stage of early consultation, it is anticipated that these are unlikely to be significant.

## **8.0 RECOMMENDATIONS**

- 8.1 The Authority is recommended to:
- (i) Approve the draft response to this consultation outlined in Appendix 1.
  - (ii) Note that further updates on proposed changes and potential implications for the Authority will be reported at future meetings.

## **9.0 COMMENTS OF THE FINANCIAL ADVISER**

9.1 The Financial Adviser has been consulted in the preparation of this report and his comments incorporated within.

## **10.0 COMMENTS OF THE LEGAL ADVISER**

10.1 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:** Controls on the handling, transfer and transport of waste: A consultation, DEFRA, December 2006  
  
Environmental Protection Act, 1990, Section 34, Waste Management, The Duty of Care, A Code of Practice  
  
Control of Pollution (Amendment) Act, 1989

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## **Appendix 1. Draft letter of response on 'A consultation on Controls on the handling, transfer and transport of waste' from the North London Waste Authority**

Duty of Care Consultation Responses  
Defra  
6/F7 Ashdown House  
123 Victoria Street  
London  
SW1E 6DE

8<sup>th</sup> February 2007

Dear Sir,

### **Controls on the handling, transfer and transport of waste: A consultation**

Thank you for providing us with the opportunity to respond to the consultation on the above. NLWA is one of the six joint waste disposal authorities in England, with nearly 1m tonnes of municipal solid waste arising in its area each year.

Whilst we have not responded individually to each question included within the three separation consultation documents on the Duty of Care, The Registration and Control of Waste Brokers and the Registration of Waste Carriers our response addresses those areas of key concern to a disposal authority. Separate responses from North London Waste Authority's constituent borough councils are likely to address particular issues which are relevant to collection authorities.

The main over-arching comments are that:

- The Authority is broadly supportive of the approach included in the proposals based upon a rationale for change with which we also agree.
- In practical terms the Authority is supportive of increased controls on the export of waste but suggests that the regulatory authorities are best placed to suggest appropriate penalties for the same.
- The Authority also supports the pragmatic suggestions to incorporate the evidentiary requirements for pre-treatment of waste prior to landfill into Duty of Care transfer notes and similarly the addition of WEEE information to confirm compliance with the WEEE legislation.
- In terms of the suggestions for increasing the regulation of waste brokers, the Authority suggests that evidence of appropriate Certificate of Technical Competence (COTC) training would a practical approach to ensuring that brokers have the required level of expertise for the material they are brokering, without imposing undue additional regulatory burdens onto them or the regulatory authorities.

These and more detailed comments are set out in the attached paper.

The constituent borough councils to the North London Waste Authority are likely to make additional points and provide separate comments in their capacities as collection authorities. You will receive a response individually from both tiers of local waste services within our area.

Thank you once again for the opportunity to respond to this consultation and if you require clarification on any of the points raised, please do not hesitate to contact me.

Yours faithfully

**Cllr Brian Coleman AM FRSA**  
**Chairman, North London Waste Authority**

**THE NORTH LONDON WASTE DISPOSAL AUTHORITY RESPONSE TO  
CONTROLS ON THE HANDLING, TRANSFER AND TRANSPORT OF WASTE:  
A CONSULTATION**

**1.0 GENERAL COMMENTS**

- 1.1 The Authority is broadly supportive of the approach outlined in the consultation, to develop:
- a simplified, modernised regulatory regime
  - a reduction in waste crime and illegal waste shipments into and out of the UK , and an improvement in environmental protection; and
  - a reduction in the mis-description and mis-management of wastes.

**2.0 DOCUMENT 1 – CONTROLS ON THE HANDLING, TRANSFER AND TRANSPORT OF WASTE: A CONSULTATION – THE DUTY OF CARE**

- 2.1 The Authority's response to the consultation document on proposed changes to the Duty of Care regime concentrates upon questions which have most relevance to the Disposal Authority. These are:
- Questions 9 to 11 on export controls
  - Questions 14 and 15 regarding how the Duty of Care paperwork might be adapted to incorporate evidence of compliance with the pre-treatment evidence and waste characterisation requirements of the Landfill Directive
  - Question 17 regarding enforcing the requirements of the WEEE Directive with respect to non-household end users.
- 2.2 Question 9 – The Authority agrees that there should be a general duty of care placed upon all those involved in the export of waste to ensure that they take all measures as are reasonably possible to prevent the contravention of transfrontier shipment controls. However, given that the Government is carrying out a separate review of the transfrontier shipment controls in the UK it is important that any extension of the duty of care regime to the export of waste should be considered as part of that separate consultation as well and clarification issued regarding which consultation document and responses take precedence and how final guidance and regulations will be put in place. A system under which the Environment Agency gives some form of accreditation to individual overseas reprocessors would be far more efficient than each waste collection and/or disposal authority trying to make its own checks.
- 2.3 Question 10 – The Authority supports the addition of a new and specific offence to transfer waste where the person transferring it knows or ought to reasonably suspect that the waste is being, or will be illegally exported. The Authority suggests that the regulatory authorities are best placed to recommend what the penalties for such an offence should be as well as evaluating the costs and benefits of such a proposal. If the cost-benefit analysis of such a change however results in an additional financial burden to the public purse then this should be consulted upon at the next stage of the process of reviewing the regulations.

- 2.4 Question 11 – The Authority also supports the addition of a new and specific offence to transfer waste where the person knows or ought to reasonably suspect that the waste has been illegally imported. As above, the Authority’s view is that the regulatory authorities are best placed to recommend appropriate penalties and carry out a cost-benefit analysis.
- 2.5 In general terms the Authority supports the principle of incorporating the evidentiary requirements of pre-treatment and the requirement to include a ‘basic characterisation’ of the waste as required by the Landfill Directive into the Duty of Care administrative and regulatory framework. It would be helpful in the Authority’s opinion to extend the waste description required for waste transfer notes to include basic characterisation and evidence of pre-treatment information. However, the practicalities of such changes need considerable thought because whilst the original producer of a waste might provide detailed characterisation information, when that waste passes through a number of subsequent processes with elements of the waste stream removed and only some parts sent to landfill, the final characterisation information may bear only limited resemblance to that which was originally provided.
- 2.6 Questions 14 & 15– Initially the onus for recording basic waste characterisation information should be targeted at the producer, however as the nature of the waste might change throughout the process, before it gets to landfill, it will also be necessary for other waste holders within the chain to produce new transfer notes with revised waste characterisation information – so ultimately this needs to be a shared responsibility. Revised characterisation information could also include a statement about any pre-treatment which has occurred so that compliance with the requirements of the Landfill Directive is confirmed. Ultimately however, the landfill operators will need to be satisfied that the waste they receive has had appropriate pre-treatment. Although the last holder of the waste prior to landfill may not have been the organisation which carried out the pre-treatment, e.g. they may just be bulking up residual waste after recyclables have been extracted, it would be helpful if all those in the chain from the treatment stage onwards had an onus to describe the pre-treatment which has already occurred on the transfer note.
- 2.7 Landfill operators may wish to introduce their own additional checks to ensure that they are satisfied. Waste producers will also want to satisfy themselves that if their waste is pre-treated that it doesn’t get mixed with non-treated waste prior to arrival at landfill, but this can potentially be arranged through the commercial agreements between producers and their waste management companies.

2.8 Question 17 asks whether it would be better for the requirements of the WEEE Directive for non-household end users (e.g. businesses) who are disposing of waste electrical and electronic equipment to be met by the non-household end users providing their own evidence that the WEEE was subsequently treated and recycled or whether there should simply be an additional category of information on waste transfer notes to record this information. The Authority supports the addition of WEEE treatment and recycling information onto transfer notes. One of the benefits of this approach is that it will ensure that the data requirements of the WEEE Directive are linked to the regulatory waste management control requirements of the duty of care. It will aid data capture as well as providing companies treating and recycling the WEEE with information about the composition of the material.

2.9 The costs of this approach include the additional burden associated with setting up and running systems for ensuring that WEEE data from the transfer note system is transferred to WEEE data capture systems for compliance purposes and the fact that the two regimes have been established for slightly different reasons. It is also likely that Waste DataFlow questions (e.g. question 26 for collection authorities and disposal authorities and questions 10 and 16 for collection authorities) will also need to be amended to ensure that the descriptions and breakdown of different WEEE streams are consistent. The costs of these administrative amendments is likely to fall across the collection, treatment and disposal chain, i.e. upon collection authorities, disposal authorities, waste management companies, compliance schemes and authorised treatment facilities.

### **3.0 DOCUMENT 2 – CONTROLS ON THE HANDLING, TRANSFER AND TRANSPORT OF WASTE: A CONSULTATION – THE REGISTRATION AND CONTROL OF WASTE BROKERS**

3.1 The Authority's response to the consultation document on proposed changes to the registration and control of waste brokers regime concentrates upon the questions about the regulatory controls of waste brokers – principally Question 6.

3.2 The consultation document states that:

- There is currently no requirement for brokers to keep documentation.
- At present, the broker application process does not require details of what waste is being brokered.
- The current registration and inspection system is not risk based. Neither does it facilitate a competency or 'tiering' approach to distinguish different categories of waste, for example, hazardous waste.

- 3.3 Question 6 - The Authority supports the principle of strengthening the current regulatory controls on brokers but without imposing an undue regulatory burden and costs. The Authority suggests that one option for ensuring competency of brokers would be to require brokers to have an appropriate level Certificate of Technical Competence (COTC) for the waste that they broker. The COTC regime is already in place to ensure that operational staff are appropriately qualified and this system could be extended to brokers to ensure that they fully appreciate the potential environmental impacts of and handling requirements for particular types of waste. A new Certificate of Technical Competence, omitting some of the operational aspects of current certificates but adding matters relating to export, mixing of wastes and impacts of treatments, could be a pre-requisite for registering as a broker.
- 3.4 In terms of whether brokers should be required to keep transfer notes and therefore documentation about the waste that is being brokered, the Authority recommends that registered brokers should be required to ensure that appropriate transfer notes are retained to ensure that they are complying with the requirements. Brokers should also be able to charge for document handling and control but this should be left up to the brokers. The key point is that it must be possible to hold brokers to account for arrangements they make for the transfer, treatment and/or disposal of all types of waste.

#### **4.0 DOCUMENT 3 – CONTROLS ON THE HANDLING, TRANSFER AND TRANSPORT OF WASTE: A CONSULTATION – THE REGISTRATION OF WASTE CARRIERS**

- 4.1 The Authority's response to the consultation document on proposed changes to the registration of waste carriers regime concentrates on a response to proposals for a tiered system of registration (Question 4) and penalties and offences (Questions 16 to 18).
- 4.2 Question 4 – The Authority supports the consultation suggestion that a tiered system of registration is fairer and more proportionate to risk. The consultation document on this aspect states that the Partial Regulatory Impact Assessment identifies whether some of the options for introducing a tiered system would impose a greater cost than others, however, this simply identifies some of the additional cost elements and states that the more complex any tiered registration becomes, the greater the overall cost would be for all involved.
- 4.3 Balancing the benefits of a tiered system against the knowledge that a more complex tiered system will be more expensive, the Authority supports distinguishing carriers by the number of vehicles under a single registration and the type of waste (hazardous or non-hazardous) which is transported. In introducing any such system, consideration would need to be given to how best to ensure compliance with this system.

- 4.4 Question 16 - The Authority supports the proposal for an additional specific offence to be introduced for intentionally providing false or misleading information on a waste carrier registration form, and/or to forge them. The Authority considers that the regulatory authorities are best placed to propose appropriate penalties for such offences. However, the benefits of introducing such an offence include strengthening the legislation, giving the registration of carriers legislation more weight.
- 4.5 Question 17 - The Authority is not suggesting any additional offences that are needed to help enforcement.
- 4.6 Question 18 - The Authority notes that the maximum penalty at the moment for transporting waste without being registered as a waste carrier is liable on summary conviction to a fine not exceeding £5,000. The Authority does not consider that this is sufficient for such an offence, but recommends that the levels of penalties and fines for handling, transfer and transport of waste offences are reviewed together and that the regulatory authorities are best placed to recommend an appropriate level.
- 4.7 Finally, the Authority welcomes the proposal for the Government to change its guidance on what is meant by carrying waste on a 'professional basis' so that it includes those that 'in the course of their activities, normally and regularly transport waste, whether that waste is produced by them or by others'. Any clarification of the necessity for organisations to register as exempt or to register as a waste carrier and pay for the same is very much welcomed because it can be too easy for organisations to say that they are 'exempt' from the legislation when they do in fact need to register.

## **5.0 CONCLUSIONS**

- 5.1 In conclusion, the Authority supports the rationale for and spirit of the proposed changes to the regulations and would urge that Government issue the second consultation on this matter in a timely fashion. In the Authority's opinion the systems for WEEE regulatory compliance will need to be introduced separately and first, from 1<sup>st</sup> July 2007. However, if the controls and regulations on the handling, transfer and transport of waste contained in the consultation can be changed in time to coincide with the pre-treatment requirements of the Landfill Directive next year, then this would be helpful. The Authority would urge Government to avoid the scenario of authorities setting up systems for first WEEE and then Landfill Directive compliance, only to find them changed again following a revision to the Duty of Care regime. It currently takes Authority officers approximately two months each year from start to finish to renew the relevant waste transfer notes with the constituent borough councils and contractors. The timing and lead-in time provided to authorities for implementing agreed changes, need to be adequate.

**Report Ends**