

Agenda Item No:

NORTH LONDON WASTE AUTHORITY

REPORT TITLE:

DEFRA CONSULTATION ON PROPOSED CHANGES TO THE RECYCLING CREDIT SCHEME

REPORT OF:

HEAD OF WASTE STRATEGY AND CONTRACTS

FOR SUBMISSION TO:

AUTHORITY MEETING

DATE:

7TH DECEMBER 2005

SUMMARY OF REPORT:

This report sets out the principal matters raised in a consultation paper produced by DEFRA on proposed changes to the recycling credit scheme and provides a draft response to the parts of the consultation that are relevant to the Authority.

RECOMMENDATIONS

The Authority is recommended to approve the draft response to the consultation paper on changes to the recycling credit scheme (Appendix 1).

Signed by: Head of Waste Strategy and Contracts

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Date:

1. INTRODUCTION

- 1.1 This report deals with a consultation paper on proposed changes to the recycling credit scheme. In producing a draft response from the Authority (Appendix 1), reference has also been made to the draft Statutory Instrument and draft Guidance Document which, once finalised would respectively enact the proposed changes and provide non-statutory guidance for authorities and third parties working within the remit of the recycling credit scheme.
- 1.2 It should be noted that whilst the proposed change to a tonnage based levy, (see *DEFRA consultation on levy apportionment* paper presented at the Authority meeting on 19 October 2005), will mean that the **duty** placed on joint waste disposal authorities such as ourselves to pay recycling credits to constituent waste collection authorities (WCAs) is removed, the Authority will still be affected by the recycling credit scheme in respect of recycling and re-use credit payments to third parties. It is primarily for this reason that officers consider a response from the Authority to this consultation to be necessary.
- 1.3 Note that section five of this paper outlines the specific changes proposed, but because of the proposed tonnage based levy some of these are relevant to the Authority and some are not.

2. THE LEGISLATIVE BACKGROUND

- 2.1 Section 52 (1) of the Environmental Protection Act 1990 (EPA 1990) introduced recycling credits as a mechanism for incentivising recycling and composting of household waste by WCAs and third parties.
- 2.2 A review of the scheme and consultation were carried out in 2004 and subsequent changes to the scheme included in section 49 of the Clean Neighbourhoods and Environment Act 2005 (CNEA 2005), alongside a commitment to develop guidance on the scheme.
- 2.3 Under the EPA 1990, (Section 52 (1), Waste Disposal Authorities (WDAs) such as the NLWA have a **duty** to pay recycling disposal credits to WCAs for any household waste which WCAs collect and then recycle. In other words a credit is paid to the WCA for avoided disposal costs. WDAs also have a **power**, (under Section 52 (3) of the EPA 1990), but not a duty, to pay recycling disposal credits to third parties such as community groups.
- 2.5 The EPA 1990 also refers to the potential payment of recycling collection credits by WCAs for avoided collection costs, but as the consultation documents focus on recycling disposal credits which are the type of credits payable by the NLWA, this Authority paper is focussed upon disposal credits paid by WDAs such as the Authority.

3. THE RATIONALE FOR CHANGE

- 3.1 The first reason why Government is seeking to change the recycling credit scheme is that recycling disposal credits were introduced as an early initiative to incentivise recycling and composting at a time when other policy levers were absent. However, now that other policy and fiscal levers do exist, such as landfill tax and the landfill allowance trading scheme (LATS), the role of the recycling credit scheme requires fresh consideration.
- 3.2 Secondly, the six statutory joint waste disposal authorities, (SJWDAs), will no longer be required to pay recycling disposal credits to their WCAs under the Government's proposed tonnage based levy arrangement. A recent amendment to the EPA 1990 allows the Secretary of State to remove this duty, which will be activated by a commencement order with an anticipated effective date of April 2006. However, as a result of this change it is therefore appropriate to review the recycling credit scheme generally, when an essential part of it, i.e. the payments of recycling disposal credits to be made to WCAs by SJWDAs will shortly be removed.
- 3.3 Thirdly, there is a recognition by Government that in the current operating environment, locally and jointly agreed working arrangements between WDAs and WCAs might offer more appropriate solutions, than a centrally imposed 'standard' approach. The draft guidance on recycling credits, issued as part of the consultation, states that increased flexibility for WDAs and WCAs has been introduced (section 52(1B) of the EPA 1990 and the CNEA 2005), allowing authorities to develop joint working arrangements tailored to their area by mutually agreeing not to make inter-authority recycling disposal credit payments (although there is no guidance included about how such an arrangement may be made).
- 3.4 However, the draft guidance states that where agreement cannot be reached between WDAs and WCAs, or where the default scheme is most appropriate, then WDAs will still be required to pay recycling disposal credits to WCAs as per Section 52(1) of the EPA.
- 3.5 Fourthly, the consultation document states that recycling credits are closely linked, as a policy instrument, to local authority recycling targets. Whilst the latter are not covered by the consultation paper on changes to the recycling credit scheme, they are being reviewed by DEFRA, so now is an appropriate time to review the credit scheme.
- 3.6 Fifthly and finally, the other reason for reviewing the recycling credit scheme is that recycling disposal credits have been an increasing cost and rising proportion of expenditure for WDAs in the last few years as a result of rising landfill tax and sharp increases in recycling rates. The consultation says that WDAs are committing an increasing proportion of their budgets to programmes operated by WCAs - without any link or relationship to the costs of collection of recyclables or reprocessing the

same – thereby creating unhelpful tension between county council WDAs and district council WCAs.

- 3.7 In this climate where joint working and securing economies of scale is vital, consultation by DEFRA also showed that both WCAs and WDAs saw the unreformed recycling credit scheme as one of the most divisive factors in the two tier relationship and many community groups argued that the current third party credit scheme does not operate effectively either.
- 3.8 The changes proposed will:
- Increase flexibility of payments from WDAs to WCAs in two tier areas by giving authorities the option to agree alternative arrangements.
 - Give the Secretary of State powers to set the calculation of recycling credits through secondary legislation

4. PAYMENTS FOR RE-USE – NATIONAL CHANGES PROPOSED

- 4.1 The other major change proposed in the consultation is the explicit incorporation of 're-use' into the framework of the recycling credit scheme – which will affect those authorities paying, and those authorities and third parties, receiving credits.
- 4.2 The rationale for including re-use within the recycling credit framework is the Government's desire to recognise the contribution re-use activity makes to securing more sustainable production and consumption. No other rationale is included in either the consultation document or the draft guidance regarding the rationale for paying re-use credits. However, the consultation document states that the CNEA 2005 clarifies that recycling disposal credits can be paid for re-use and that WDAs have a duty to pay such credits to WCAs for the avoided cost of disposal (or to make alternative arrangements as above) and that both WDAs and WCAs have a power to pay (respectively recycling disposal and recycling collection) credits to third parties. It is also made clear in the consultation document that Government sees no rationale for the calculation and value of credits paid for re-use activity to be different to those paid for recycling.
- 4.3 So, the principal changes in the proposals are an option for WDAs and WCAs not to use the recycling credit scheme where alternative arrangements are jointly agreed and the incorporation of re-use into the scheme.

5. SPECIFIC CHANGES PROPOSED AT A NATIONAL LEVEL

- 5.1 The principal change as noted above will be an option for WDAs and WCAs to not use the recycling credit scheme where alternative arrangements are jointly agreed.
- 5.2 The second proposal is that from April 2006 the value of a disposal credit should be based on the average cost per tonne of the most expensive

form of disposal, i.e. taking the most expensive form of disposal for each WCA and then calculating the average of these values to obtain a single value across a whole WDA area, creating a single disposal credit for the area (note that in the NLWA area a single disposal credit has always applied).

- 5.3 Thirdly it is proposed that recycling disposal credits should be capped at the 2005/06 level, with future increases to cover inflation only - it is proposed that these rises should be 3% per annum. This would retain a link to the current basis of the calculation, namely the avoided cost of the most expensive form of disposal in 2005/06 (but introducing a single credit value across a whole WDA area). It would also incorporate the £3 rise in Landfill Tax already delivered in April 2005, but would not include future increases in the Tax. From April 2006, the credit would increase in line with inflation only. So, in summary, each WDA would calculate its average disposal credit payment (i.e. the average cost of the most expensive form of disposal for the whole area) in 2005/06 and this single figure would form the basis for all future disposal credits.
- 5.4 Fourthly it is proposed that the final guidance which will be issued, will give greater encouragement to local authorities to adopt best practice in the payment of recycling credits to third parties. It is proposed that this payment still remains discretionary, but that there is a presumption that payments will be made where the third parties' activities fit with authorities' strategies. The guidance will also encourage authorities to take into account the social and economic benefits of community recycling in taking a decision on payments – although no guidance is included about how these additional benefits might be objectively assessed.
- 5.5 In relation to third party recycling disposal credits it is proposed that the calculation of these credits is made in exactly the same way as for waste collection authorities.
- 5.6 Fifthly, recycling collection credits are only payable to third parties and are not mandatory. It is proposed that the system for the payment of collection credits remains unchanged – i.e. there are no proposals to make third party recycling credits mandatory or to enact Section 52 (2) of the EPA which imposes a duty on WCAs to pay collection credits to WDAs.
- 5.7 Finally it is proposed that re-use credits should be paid and calculated in exactly the same way as recycling credits. The majority of re-use credits will be paid to the community sector and the new draft guidance makes it clear that Government expects serious consideration to be given to applications for third-party re-use credit payments. In two tier authorities the consultation states that Government would expect WCAs and WDAs to jointly agree whether to make credit payments for re-use or to establish an alternative arrangement.

6. PRINCIPAL IMPLICATIONS FOR NORTH LONDON

- 6.1 Most of the proposals in the consultation will have no effect on the Authority or our constituent borough councils if the Government introduces the default tonnage based levy and removes our duty to pay recycling disposal credits from 2006/07, as expected. If, however, the Government delays with the above, but proceeds with the changes proposed in this consultation, the Authority will continue to be liable to pay recycling disposal credits to our constituent borough councils, albeit at a rate capped at 2005/06 levels plus inflation.
- 6.2 The capping will apply to third party credits too, and the Government is seeking to make it clear that these should be paid for both waste recycling and re-use.
- 6.3 Members will recall that at the last authority meeting it was agreed to review our policy regarding the payment of third party credits once the Government's intention and timetable in regard to a default tonnage-based levy are clear.

7. NEXT STEPS

- 7.1 Changes to the recycling credit scheme were put before Parliament and the CNEA gained Royal Assent on 7 April 2005. The steps now needed to implement the Clean Neighbourhoods and Environment Act 2005 are:
- commencement of section 49 of the CNEA 2005 by Order from 3 April 2006 (this being a Monday), which enables the Secretary of State to change the method of by which payments for waste recycling and disposal are made
 - introduction of secondary legislation under sections 49(2), 5(a) and 6(a) of the CNEA 2005 to determine how the amount (i.e. the value) of recycling credits is set and
 - introduction of guidance on operation of the scheme under section 49 (8) of the CNEA 2005.
- 7.2 A draft Statutory Instrument entitled The Environmental Protection (Waste Recycling Payments) (England) Regulations 2006 – with an effective proposed date of 3rd April 2006 is attached to the consultation which would implement the proposed changes outlined in this paper – although this makes no mention of 're-use'. This draft Statutory Instrument would revoke The Environmental Protection (Waste Recycling Payments) (England) Regulations 2004 and The Environmental Protection (Waste Recycling Payments) (England) (Amendment) Regulations 2005.

8. RECOMMENDATIONS

The Authority is recommended to approve the draft response to the consultation paper on changes to the recycling credit scheme (Appendix 1).

9. COMMENTS OF THE FINANCIAL ADVISER

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

10. COMMENTS OF THE LEGAL ADVISER

The Legal Adviser has reviewed this paper and provided appropriate guidance.

Local Government Act 1972 – Access to information

Documents and Websites used:

Consultation paper on changes to the recycling credit scheme, DEFRA, October 2005

Draft Guidance on the Recycling Credit Scheme

Draft Statutory Instrument – The Environmental Protection (Waste Recycling Payments) (England) Regulations 2006

NLWA response to the Review of the Recycling credit scheme – 22 October 2004

Paper entitled *DEFRA consultation on levy apportionment* presented at the Authority meeting on 19 October 2005

Recycling Credit Claims 2004/05 report to the Authority meeting 19 October 2005

www.defra.gov.uk/corporate/consult/recycling-credits05/index.htm

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APPENDIX 1.

DRAFT RESPONSE TO PROPOSALS TO ALTER THE RECYCLING CREDIT SCHEME

Consultation response on altering the recycling credit scheme

Local Authority Waste Funding and Governance Team
Waste Strategy Division
Department for Environment, Food and Rural Affairs
Zone 7/E14
Ashdown House
123 Victoria Street
London
SW1E 6DE

7 December 2005

Dear Sir or Madam,

Consultation paper on changes to the recycling credit scheme (2005)

Thank you for providing us with the opportunity to respond to the consultation on the above. As one of the six joint waste disposal authorities in England, we are aware that this consultation primarily affects us and the constituent waste collection authorities (WCAs) in North London in relation to the payment of third party recycling disposal and re-use credits, given the proposals for a tonnage based levy system and the concomitant removal of the duty for us to pay recycling disposal credits to the constituent WCAs. However, having outlined the relatively narrow focus of our interest in these proposals, we are pleased to provide some brief feedback.

You may receive separate comments from our constituent borough councils, although officer-level liaison has taken place.

If you require clarification on any of the points raised, please do not hesitate to contact me.

Yours sincerely,

Andrew Lappage
Head of Waste Strategy & Contracts

Consultation response on altering the recycling credit scheme (2005)

North London Waste Authority (NLWA) Draft Response

The NLWA sets out below answers to your direct questions. These are then followed by other comments, observations or requests that relate to the proposed changes, which are guided by the assumption that our liability will be limited to third party re-use and recycling credit payments.

DEFRA Questions

Question 1:

a) Do you agree that there should be a single value for a disposal credit across an entire WDA area?

Yes, the principle of a single value for a disposal credit across an entire WDA area is supported by the NLWA and it is something that in practice is currently enjoyed by all NLWA constituent boroughs have been using since the inception of recycling credits.

b) Do you agree with the Government proposal to base the calculation on average cost of the most expensive form of disposal across the WDA area?

Yes, the NLWA agrees that this is a good proposal.

Question 2.

a) Do you agree that change is needed to decouple the value of recycling credits from rising disposal costs driven by Landfill Tax and to promote sensible dialogues in two-tier areas on the most appropriate financial support for recycling across the area?

Yes, the NLWA does agree with the need for change for the reasons stated above.

b) Do you agree with the Government's proposal to introduce a cap with subsequent rises of 3% to keep pace with inflation?

The NLWA agrees that there is a need to introduce a limiting factor for future rises in the disposal credit. However, a 3% increase year on year may be more or less than inflation depending upon the rate of inflation at the time. It may be better to link the annual rises to the underlying rate of inflation over the previous financial year or as has been the case in previous annual amendments to the rate, by linking it to the retail price index, (RPI) figure for a particular month. Previous annual changes to the rate of recycling credits have taken into account the annual RPI figure for the December prior to the year in question, e.g. the December 2004 RPI increase was 3.5% and this (plus the landfill tax increase) led to the new credit value in April 2005. If the duty to pay recycling credits for any reason was not repealed for the SJWDAs then this approach to annual increments would still be valid alongside the other changes proposed in the context of the SJWDAs .

In our previous response to the 2004 consultation on recycling credits we suggested it would be preferable if recycling credits were capped at their current level (plus RPI) and a power given to WDAs to make further incentive payments to WCAs as is wished locally, and that this combination provides a known, established baseline for current services and expenditure, but also the flexibility to go beyond this if required locally. We would also suggest now that the power given to WDAs to make further incentive payments to WCAs applies similarly to third parties.

c) Do you agree that the cap should fix disposal credit values at 2005/06 levels?

The rationale for fixing the disposal credit at 2005/06 levels is sensible. It may be good to also set some review years – perhaps five yearly or linked to target years for LATS compliance. Designated review points would also allow the cost of the most expensive form of disposal to be reviewed, so taking account of new facilities or contracts which might significantly affect this figure over time.

It may also be helpful to note that the *consultation paper* on proposed changes to the recycling credit scheme says that the each WDA would work out its average disposal credit payment (i.e. *average cost* of the most expensive form of disposal for the whole area) *in 2005/06* and that this single figure would form the basis for all future disposal credits (para. 4.10). However, the *draft Statutory Instrument* – The Environmental Protection (Waste Recycling Payments) (England) Regulations 2006 states that the single WDA wide credit would be calculated by calculating the *expenditure which would have been incurred in disposing of the waste at the relevant date*, with the relevant date being 31st March 2006, (para.s 4.(2) (a) and (b) and 4.(6)). Clarity is required regarding whether the calculation of the disposal credit is based on the average rate of the most expensive form of disposal throughout 2005/06 or on the rate of the most expensive form of disposal as at 31st March.

Question 3.

Do you agree that credits for third parties should be calculated in the same way as for local authorities?

The NLWA supports the principle of third party recycling credits, and makes such payments voluntarily already. The NLWA also agrees that third party credits should be calculated in the same way as for local authorities, something which we also argued for in our previous response. We also have a few additional comments regarding these payments – see question 5.

Question 4.**Do you agree that re-use credits should be calculated on the same basis as recycling credits?**

Yes, the NLWA welcomes the recognition of re-use within the recycling credit scheme and also agrees that they should be calculated on the same basis as recycling credits. We also welcome the fact that these payments remain discretionary however, and the ability of WCAs and WDAs to jointly agree the terms of payment of the same. This in particular is essential as it allows authorities to limit liability for re-use credits to waste that is being removed from the established municipal waste stream by charities and not-for-profit organisations. The alternative would be that second-hand shops, jumble sales, car boot sales, physical and internet auctions, possibly used car dealers could all claim re-use credits when disposal is only being deferred rather than fully avoided.

Assuming however that the Government provides a default tonnage-based levy for statutory joint waste disposal authorities for 2006/07 onwards, we fully expect that we will not be required or expected to pay re-use credits to our constituent borough councils.

Question 5.**We welcome any comments and suggestions on the draft statutory instrument or guidance.**

We would welcome some additional guidance on the implementation of the proposals – specifically some more guidance on the responsibility for sourcing and maintaining the list of ‘approved’ recyclers and recyclers registered to receive credits in a WDA area, as this may affect our third party credit claimants.

We also query whether the effective date for the Regulations to come into force should be 1st April 2006, rather than 3rd April, (whilst recognising that 1st April 2006 is a Saturday).

It is noted that the draft Guidance on the Recycling Credit Scheme attached as part of the consultation, paragraph 3.3 states that:

The six Joint Waste Disposal Authorities are no longer required to pay recycling credits to their WCAs. Section 52(1A) of the EPA 1990 confers powers on the Secretary of State to remove by Order the duty imposed on those authorities by section 52(1) and the Environmental Protection (Waste Recycling Payments) (England) Order 2005 duly removed the duty.

However, it is our understanding from conversations with your Waste Strategy team that the duty will be removed by a Commencement Order rather than the proposed Statutory Instrument referred to above. The final guidance document will accordingly require amendment.

Finally, the draft Statutory Instrument includes no mention of ‘re-use’, although this is included elsewhere in the consultation papers. Some further information regarding the enactment of the proposals to include ‘re-use’ within the recycling credit scheme framework would be helpful.

Report Ends