



Briefing 08/24 May 2008

Draft Joint Waste Authorities (Proposals) Regulations 2008

Defra has issued the above proposals for Joint Waste Authorities in their consultation document dated 17th March 2008. All responses are required by Monday 9th June 2008.

To: All Chief Executives, Main Contacts and Email Contacts (England)

Key Issues

- Background to proposals
- The consultation
- Key elements of the proposed regulations for establishing Joint Waste Authorities
- Summary of questions for responses

1. Introduction

The Local Government and Public Involvement in Health Act 2007 set out powers for joint waste authorities to be established in England. Two or more local authorities may submit proposals to discharge responsibility for waste collection, disposal and/or street cleansing functions to a joint waste authority. Proposals must be submitted to the Secretary of State who may make Regulations and guidance to provide a framework for joint waste authorities.

On 17th March 2008 Defra issued the Draft Joint Waste Authorities (Proposals) Regulations 2008 and the Draft Guidance on proposals for Joint Waste Authorities in England consultation document inviting responses over a 12 week consultation period ending on Monday 9th June 2008. Full details of the consultation papers are available on the Defra website:- www.defra.gov.uk.

2. Background

Waste collection and disposal is viewed as a major pressure on council tax, and partnership working is one of the main service delivery options available to local authorities in England in providing efficient and effective, high quality services.

Sustainable waste management relies on actions at a broader geographical scale than a single local authority, and Defra research suggests that most local authorities, particularly smaller authorities, could benefit from the economies of scale achievable through joint working when procuring waste treatment facilities.

The Local Government White Paper (Strong and Prosperous Communities) highlighted the need for local authorities to work together to improve efficiency and outcomes. The efficiency of the waste management function can be significantly affected, in two-tier authorities, because of separate decision-making powers and funding streams. The integration of waste collection and disposal services has the potential to create greater efficiencies. The final report from the Joint Working in Waste Project (July 2006) detailed the many benefits of joint working on waste and highlighted the need for legislative changes to facilitate partnership working as the limited legal basis was identified as one of the key barriers. This limited legal basis causes difficulties in dealings between authorities and the private sector and therefore a mechanism which provides a statutory basis for joint working will give increased certainty to potential partners.

Existing partnership models require each authority to take responsibility for employing staff and signing contracts. Benefits from joint waste authorities would be joint responsibility for staffing and contract issues as well as joint statistical reporting. This would enable greater joint working, for example there would be no need to measure waste separately.

In response to the Joint Working in Waste Project, and requests from within local government, the Local Government and Public Involvement in Health Act 2007 provided the powers to establish Joint Waste Authorities. Local Authorities wishing to work together to discharge their waste functions can submit a proposal to the Secretary of State requesting the establishment of a statutory joint waste authority.

The main focus of the powers is to facilitate the integration of waste collection and disposal functions in two-tier areas, although it is recognised that other authorities may wish to establish joint working on waste and therefore any authority in England can become part of a joint waste authority.

Joint waste authorities cannot be established just to work on strategic issues, they will have operational functions and it may be that authorities wish to discharge other functions such as street cleansing but it is envisaged that most JWA's will take on waste collection and/or disposal functions. Other partnership models can be used for joint working solely on strategic issues but a JWA would need to develop policies and strategies for the services discharged to them.

3. The consultation

Defra issued the consultation on 17th March 2008. The consultation period lasts for 12 weeks with responses required no later than Monday 9 June 2008.

The consultation seeks views on:-

- The draft Regulations
- The draft guidance
- 15 specific questions regarding proposals, key issues and assessment criteria
- Any related issues

All responses must be sent to LAWFG@defra.gsi.gov.uk, fax 020 7238 4858 or by post to Local Authority Waste Funding and Governance Team, Department for Environment, Food and Rural Affairs, Area 6C, Ergon House, Horseferry Road, London SW10 2AL. They must be clearly marked '**Joint Waste Authorities – Consultation Responses**'.

4. Key elements of the Draft Joint Waste Authorities (Proposals) Regulations 2008

The proposals seek to modernise and improve waste services through the integration of services across an area. The intention is to improve services to residents and maintain or improve performance against local waste authority statutory obligations e.g. LATS (Landfill Allowance

Trading Scheme). Two or more local authorities wishing to establish a joint waste authority (JWA) to discharge some, or all, of their waste functions to, may make an application to the Secretary of State. All authorities involved in the application must have taken reasonable steps to consult with residents and other interested parties.

JWA's will be corporate bodies, governed by elected members from the constituent authorities and can only be dissolved where all the constituent authorities agree. Local waste authorities can choose which functions to transfer and these functions must be included in the application. Section 205 of the Local Government and Public Involvement in Health Act 2007 sets out which functions can be transferred to a JWA. Some, or all of these functions can be transferred but if the entire waste function is transferred the JWA must be an operational body and not just carry out a strategic and commissioning role. Local authorities' statutory obligations under the LATS will automatically transfer to the JWA when the waste disposal function is transferred.

The proposals contain details on the transfer of waste functions and the statutory duties and responsibilities involved for each local authority and the proposed JWA. Voting arrangements will be agreed by the constituent authorities.

There are three suggested options for the framework for voting in JWA's:-

- **Option 1 – National level framework specifying precisely the type of issues requiring/expecting unanimous voting.**
- **Option 2 – National level framework saying that key issues should be subject to unanimous voting**
- **Option 3 – Local flexibility to decide on voting arrangements.**

JWA's will employ their own staff but are initially likely to transfer staff from constituent authorities. The Guidance sets out the legislative framework for the transfer of staff and proposals must include:-

- An estimate of staff numbers
- Indication of staff to be transferred
- Likely necessary recruitment
- Any planned redundancies for each authority.

Any contracts, assets and liabilities relating to any of the functions to be transferred to the JWA will become the responsibility of the JWA but in the long term authorities may use JWA's to move towards single integrated contracts to maximise efficiencies. Information on contracts to be transferred will have to be submitted. However it is proposed that a threshold of £139,893 per annum, based on that in the Public (Contracts) Regulations 2006, is used.

Proposals for JWA's will need to include specific details of any PFI contracts to be transferred together with details of PFI credits awarded to any of the constituent authorities.

JWA's will not have precepting powers. Revenue Support Grant will continue to be paid to upper tier and unitary authorities. However, Waste Infrastructure Capital Grant could be allocated directly to the JWA with consent of the relevant authorities. A proposal for a JWA must include details of funding arrangements. Authorities will need to determine how the JWA will be financed and how costs will be apportioned to the constituent authorities.

JWA's taking on the disposal function from 2 or more Waste Disposal Authorities may wish to consider the use of an annual statutory levy by the JWA on the constituent authorities.

Where the LATS allowances of the constituent authorities are transferred to the JWA and LATS allowances will be pooled, the JWA will then be liable for any financial penalties as a result of

non-compliance. Contractual arrangements between the constituent authorities could be used to set out arrangements in the event of penalties.

JWA's will be responsible for all reporting obligations associated with the waste function. This will result in one set of data for the whole area and could deliver efficiencies. Changes to the Waste Dataflow database and LATS register will need to be made to reflect JWA's LATS reporting obligations.

Each constituent authority would retain the power to review and scrutinise the work of a JWA in relation to their area. Under Part 5 of the ACT, Overview and Scrutiny Committees can request information from, and send information to, partner authorities.

It is proposed that the Board of the JWA is made up of members from constituent local authorities and will therefore be subject to the Model Code of Conduct (Part 111 Local Government Act 2000).

From 1st April 2008 the Local Performance Framework will change. CAA will replace CPA with inspections more targeted and based on risk. A reduced number of targets and indicators will allow authorities and partners more freedom to tackle key priorities. All Local Area Agreements will include up to 35 local improvement targets drawn from the 198 National Indicators, agreed between local authorities, partners and central government. JWA's will be a 'partner authority and must be consulted in the preparation of Local Area Agreements on designated targets. The JWA will take on reporting obligations for LAA indicators and targets for the waste functions which it has been established to discharge and if the JWA crosses local authority boundaries it will be a partner authority in all LAA's and therefore a multi-area agreement (MAA) can be developed. MAA's are non-statutory agreements between top-tier or unitary authorities and their partners. Any MAA targets must be in the LAA. 3 categories of targets are proposed:-

- Agreed designated targets from the National Indicators set featuring in LAA and MAA These would be subject to statutory duties
- Non-designated targets from the National Indicator set
- Targets not drawn from the National Indicator set e.g. population growth.

The assessment criteria for submitted proposals will be primarily based on whether they meet the requirements of the regulations and statutory guidance. The Government is keen to encourage the integration of waste collection and disposal services in two-tier areas and JWA's wishing to operate collection only services will need to justify why waste disposal is not included in their proposals.

Any decision to establish a JWA must have support from all the relevant areas (e.g. HR, finance, legal, etc.) within constituent authorities and political endorsement at the highest level. It is therefore proposed that any submission should be accompanied by a letter from the Leader of the Councils party.

5. Summary of Questions

A summary of the questions outline in the proposals is below:-

Question 1: do you think there are additional aims that a proposal for a JWA should seek to achieve?

Question 2: are there statutory duties and responsibilities associated with the waste functions which you think need to be expanded on, or included in, the guidance?

Question 3: what is your preferred option for voting arrangements in JWAs taking on the waste collection function? Why?

Question 4: If you prefer option 1 what key issues do you think should be subject to unanimity voting?

Question 5: do you agree with the information that must be included in a proposal? Is anything missing?

Question 6: do you have non-complex contracts above this threshold or only exceed the threshold due to cumulation, e.g. framework contracts?

Question 7: do you agree with the proposed threshold of £139,893 per annum? If not, what alternative threshold, if any, do you suggest and why?

Question 8: does the draft guidance need to include any additional detail on PFI credits in relation to JWAs?

Question 9: what other issues would you like to see addressed in the financing section of the draft guidance?

Question 10: are there any LATS-related issues that local authorities developing a proposal for a JWA need further guidance on?

Question 11: is further detail needed on waste reporting in the draft guidance? If so, on what issues in particular?

Question 12: do you agree with the proposal to align the ethical regime of JWAs with that of other local authorities and similar bodies?

Question 13: in the guidance on proposals for JWAs do you want information on LAAs, MAAs, and the CAA?

Question 14: do you agree that proposals for JWAs should be accompanied by a letter from the Leader of the Councils party to the proposal?

Question 15: do you agree that provisions to this effect are included in the final Regulations or statutory guidance?

6. APSE comment

APSE sees the rationale behind Joint Waste Authorities in terms of the cost of disposal of waste and capital investment on landfill and incineration. The pooling of LATS allocations would hopefully facilitate a reduction in non-compliance and therefore reduce financial penalties.

However, APSE believes that the refuse collection service is one of the highest visible services provided by local authorities with a high level of contact with residents and should be delivered, and be accountable, at a local level. The service should also be supported by education and enforcement on waste and recycling issues in order to reduce waste.

Although APSE supports the principle of partnership working, there is a need to ensure that the governance arrangements properly reflect the need for local accountability through elected members and constituent local authorities. APSE would be concerned if JWA's became purely enabling bodies without direct links to service delivery, making resident accountability more remote and the education and enforcement roles more difficult. APSE believes that partnerships should be used where they can add value but that a strong core of services should continue to be provided directly by councils.

Recent Government policies are all directed towards waste reduction schemes and therefore there is a need to ensure that the JWA effectively contributes towards wider waste reduction targets and local sustainability.

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