



# Joint waste authorities

This briefing paper focuses on the Joint Waste Authorities (Proposals) Regulations 2009 and the associated guidance. This applies to England only and is distributed to Wales, Scotland and Northern Ireland for information.

## Key issues

Defra (Department for Environment, Food and Rural Affairs) has published the regulations and statutory guidance on Joint Waste Authorities for authorities in England

This briefing paper outlines key points in terms of what they should seek to achieve and what a proposal should contain

The deadline for receipt of all applications and information facilitating the assessment process for the initial round has been extended from 31 March to 31 July 2009.

## 1. Introduction

The Local Government and Public Involvement in Health Act 2007 contains provisions for joint waste authorities (JWA's) to be established in England, where a group of one or more authorities requests this. A JWA will be a new legal entity able to sign contracts and employ its own staff. Groups of authorities will be able to voluntarily request, by submitting a proposal to the Secretary of State, the creation of a JWA. JWA's can only be dissolved in limited circumstances and have a statutory role in the negotiation and delivery of LAAs.

In May 2008, APSE produced a briefing paper on the draft regulation:

<http://www.apse.org.uk/briefings/08-24%20%20Joint%20waste%20authority%20consultation.pdf>

Defra have now published the regulations which came into force on 18 February 2009:

<http://www.defra.gov.uk/environment/waste/localauth/pdf/jwa-regs09.pdf>

And the statutory guidance which was published on 28 January 2009:  
<http://www.defra.gov.uk/environment/waste/localauth/pdf/jwa-regs09-guid.pdf>

The regulations set out matters to be included in the JWA and information to accompany such a proposal. The guidance gives advice on the Public Involvement in Health Act 2007, what JWA proposals should seek to achieve, the Regulations themselves and general issues relating to proposals.

Defra has also issued a list of authorities who have expressed an interest in forming joint waste authorities (<http://www.defra.gov.uk/environment/waste/localauth/pdf/jwa-la-interest08.pdf>). There are seven expressions of interest identified all based in the South of England. The deadline for receipt of all applications and information facilitating the assessment process for the initial round has been extended from 31 March to 31 July 2009.

Defra has allocated £500,000 for 2008/09 to support the development of proposals for joint waste authorities. It is anticipated that further funding will be allocated for the following two years. Details on how the funding will be distributed are still being developed.

This briefing paper summarises the key points contained in the regulations and guidance.

## **2. Statutory guidance on what the proposals seek to achieve and the matters authorities should take into account in making proposals**

The statutory guidance sets out what proposals for a joint waste authority should seek to achieve. This is stated as:

*“A proposal for a joint waste authority should seek to modernise and improve waste services through the integration of services across the area to achieve efficiencies for member authorities while ensuring quality of service for residents”. Pg 8*

The guidance also states that proposals should also show how the joint waste authority:

- Will deliver environmental benefits and contribute to the wider sustainability and carbon reduction agenda
- Will maintain or improve:
  - performance against statutory obligations such as LATS,
  - the quality of waste management services delivered to residents at affordable cost
  - responsiveness to local issues such as litter.
- Have consulted with residents and any other interested parties on draft proposals

The guidance is clear that the joint waste authority will take on all the duties and responsibilities under the waste function(s) transferred to it. Section 205(8) of the Local Government and Public Involvement in Health Act 2007 sets out the waste functions which may be transferred from the relevant authorities to a joint waste authority, including waste disposal and/or waste collection, street cleansing and the duty to produce a joint municipal waste management strategy.

The guidance also lists the matters which authorities must take into account when making a proposal for a joint waste authority. This includes that where it is proposed to transfer waste disposal functions to the joint waste authority, the LATS allowances of the constituent authorities will be transferred to that joint waste authority. The joint waste authority will therefore be liable for any financial penalties or fines as a result of non-compliance with LATS. Constituent authorities of such as joint waste authority will need to consider how they will ensure compliance and, in the event of non-compliance, how liability for any penalties and fines will be shared amongst themselves.

### **3. Joint Waste Authorities (Proposals) Regulations 2008**

This section of the guidance is divided into two schedules; Schedule 1 – matters to be included in a proposal and Schedule 2 – information which must accompany a proposal.

Schedule 1 identifies that the following matters must be included in a proposal:

- Name of the joint waste authority
- Date of establishment, which should be a minimum of 12 months from the date of submission
- Geographical area which the joint waste authority will serve
- Which 'waste functions' (collection, disposal, street cleansing) will be transferred to a joint waste authority
- Members – joint waste authorities will be governed by a Board comprised of elected members from each of the constituent authorities. The total number of members on the Board will depend how the constituent authorities wish to split membership between them. Authorities will need to decide how many members each constituent authority should be represented by on the Board of the joint waste authority (for instance based on population sizes of the relevant authorities or 2 from each council, for example), the date by which first appointments of members are to be made and details of to whom these appointments must be notified.
- Date of the first meeting
- Suitable voting procedures
- The organisation, shape, size and staffing of the joint waste authority. A joint waste authority will be able to employ its own staff but the establishment of a joint waste authority is likely to involve the transfer of staff from constituent authorities to a joint waste authority. The guidance states that authorities may wish to consider arrangements for sharing some administrative support with their constituent authorities. Proposals must include:
  - An estimation of the number of staff likely to be employed by the joint waste authority
  - An indication of the staff that will transfer from constituent authorities to the joint waste authority
  - An indication of likely recruitment required
  - An indication of any planned/proposed redundancies from constituent authorities as a consequence of the establishment of the joint waste authority.
- Details on the funding arrangements for the proposed joint waste authority. Joint waste authorities will have the same borrowing powers as normal local authorities.
- First year of funding – JWA's will need to prepare annual budgets for agreement by the Board of the joint waste authority.

- Whether any assets or liabilities need to be transferred.

Schedule 2 states the information which needs to accompany a proposal and this includes:

- Each authority's area and the waste functions conferred on each authority
- Collection-only joint waste authorities in two-tier areas must justify why WDA involvement is not appropriate. This is because Government is keen to encourage the integration of collection and disposal in two-tier areas.
- Letter of approval from the Head of Paid Service
- Summary of how the consultation requirements of Section 206 of the Act have been met.
- Joint working experience of the authorities submitting the proposal for the purposes of waste management
- Authorities will need to consider how any existing waste collection, disposal and other relevant contracts will be managed. Information is required on:
  - Which other parties the contract is with
  - The date, or expected date, of when the contract will end
  - The arrangements for the continuation of any contract existing before the establishment of a JWA
  - The reasons why any existing contract existing before the establishment of a JWA will not be continued
- Impact on the amount of waste sent to landfill and how liability for any penalties or fines will be shared amongst the constituent authorities. Where two or more waste disposal authorities propose to discharge disposal functions to a JWA, their LATS allowances will be pooled in the JWA. Where waste collection authorities from different WDA areas form a collection-only JWA, they will need to agree which WDAs will have responsibility for disposal.
- Information regarding any waste PFI credits
- Anticipated cost savings
- Anticipated environmental benefits (e.g. increased recycling)
- How the current standard of waste management services to all local residents will be maintained or improved
- Communications strategy for engaging with local residents and other interested stakeholders.

#### **4. General issues**

As the JWAs will be separate legal entities, they will:

- Develop their own municipal waste management policies and strategies
- Take on any enforcement powers associated with the waste functions transferred to them
- Responsibility for any of the reporting obligations for the waste function being transferred to them (one set of data for the whole area). This includes reporting obligations under LATS for disposal functions and also any relevant national indicators.
- JWAs are under a general duty of best value and are subject to the duty to involve.
- They are partner authorities for the purpose of the local performance framework, must be consulted by the responsible local authority when it prepares its LAA and will be under a duty to co-operate with the responsible authority to

determine designated targets in a LAA. JWAs will have to have regard to any LAA targets it has agreed.

- Where the JWA crosses county geographical boundaries, then it would be a partner authority in the negotiation and delivery aspects of the LAAs in both areas and a multi area agreement on waste might offer an alternative approach for such situations.
- Under section 21 of the Local Government Act 2000 the overview and scrutiny committee of any constituent authority of a JWA will retain overview and scrutiny powers over a JWA. Where authorities have established a JWA for collection and disposal functions in a two-tier area they may have the opportunity to establish a joint overview and scrutiny committee.

## **5. APSE comment**

APSE sees the rationale behind setting up JWAs in terms of pooling LATS allocations, which could reduce non-compliance and financial penalties. In addition, JWAs could assist in delivering efficiencies in terms of joint procurement, sharing facilities and joint reporting.

APSE welcome the recognition that any proposal for a JWA needs to not only take into account efficiencies delivered, but the quality of service for the public, wider sustainability and carbon reduction issues as well as more localised issues such as litter.

APSE disagrees with the push by government to integrate collection and disposal in two-tier areas and the need for collection-only authorities to justify why WDA involvement is not appropriate. APSE believes that waste collection and enforcement are local services that should be provided locally at a district or unitary level. Therefore, a regional collaborative body such as a JWA should not dictate how waste is collected locally. Any collaborative arrangement needs to take into account different political viewpoints between the relevant authorities, as well as local differences in the perceptions of local residents. APSE would urge local authorities who are considering setting up a JWA to look at the impact of this on public perceptions and front line service delivery. In addition, APSE would not support JWA's being used as a vehicle to outsource core front line services such as refuse collection removing the discretion that local authorities currently have to determine the appropriate means of service delivery to meet local needs. APSE's recent publication *Insourcing: a guide to bringing local authority services back in-house* includes a number of case studies of local authorities that have had to bring waste management services back in-house following poor performance, resident dissatisfaction with the service and value for money.

There is a need to ensure that the governance arrangements properly reflect the need for local accountability. JWAs will be governed by elected members from the constituent authorities and exactly how the Board is constituted depends on how these authorities wish to split membership between them. This local flexibility is welcomed by APSE.

Please send any comments through to [djohns@apse.org.uk](mailto:djohns@apse.org.uk) or click here to discuss this on [APSE connect](#)

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