

THE LANDFILL ALLOWANCE TRADING SCHEME (LATS)

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- 1. How can the understanding of LATS within waste collection**

authorities (WCAs) be improved?

A WCA needs to work very closely with its waste disposal authorities (WDA) to ensure that the allowance system works effectively and that the Landfill Directive targets are met. WCAs and WDAs will also need to work together to discuss the most effective diversion strategy for their area and plan the management infrastructure to achieve the necessary diversion. Provisions in the Waste and Emissions Trading Act 2003 (WET Act) require waste disposal and waste collection authorities (with some exceptions) to produce a Joint Municipal Waste Management Strategy to ensure a partnership approach to local waste management planning.

Defra will continue to promote LATS to local authorities with a particular focus on explaining the concepts of landfill allowance trading to WCAs. WDAs can obviously work with their constituent WCAs to understand the scheme and may find the introductory guide “Landfill Allowance Trading Scheme (LATS) – A beginners guide” available at www.defra.gov.uk/environment/waste/localauth/lats/intro.htm a useful way to do this.

2. Would now be a good time to review the definitions of waste?

The definition of waste is set out in the Waste Framework Directive and has been in force in the UK since May 1994.

When the UK originally transposed the Directive's definition of waste there was no case law on its interpretation. The Department therefore issued guidance on its interpretation through DoE Circular 11/94. Since then, however there have been a number of judgements by the European Court of Justice (ECJ) and our national Courts on the definition's interpretation. A Summary of the ECJ's judgements is available at www.defra.gov.uk/environment/waste/topics/index.htm

ECJ judgements are binding on Member States and their competent authorities. The Environment Agency is the 'competent authority' for the purpose of the Directive and is required to give effect to the definition of waste, as interpreted by the ECJ. It is not feasible for either the Government or the Environment Agency to ignore ECJ judgements on the interpretation of the definition.

The definition of municipal waste as used in the LATS is fixed by Article 2(b) of the EC Landfill Directive which was transposed into UK law by the Waste and Emissions Trading Act 2003 (WET). This definition was different to that set out in the LATS guidance Defra published in 2004. This variation in definition was challenged in the courts by one authority. In response to this challenge and its potential to disrupt the scheme, Defra ran a public consultation in the summer of 2007, inviting waste authorities in particular, to express their views on what action should be taken.

A significant number of authorities responded to that consultation and stressed again the importance of certainty for the success of the scheme. A majority agreed that as

the scheme had operated under the definition set out in the guidance up to that point, it would be better for Defra to amend the definition in the WET Act, rather than narrow the scope of the scheme by making its guidance match the definition in the Act. Furthermore, such a change also ran the risk of infraction should the EU Commission take the view that the move was designed to help England avoid its obligations under the Landfill Directive.

Defra is currently in the process of amending the definition of municipal waste as set out in the WET Act.

3. Why is it important to use WasteDataFlow (WDF) and what support is available to local authorities?

WDF is intended to be a single source of timely, consistent, and accurate waste data. It is a cost effective and comprehensive online tool that allows local authorities to meet their obligations under the WET Act to report waste data to the Environment Agency (EA). WDF requires quarterly returns of data.

There is an array of methods that can be used by local authorities to improve their understanding of WDF.

- A comprehensive guidance manual was sent to each authority before the scheme began and this has already been following suggestions from users. It covers the background on WDF, how to enter data and guidance on what is expected of each question. There is also a glossary and a “Measure your treasure” tool to estimate the weight of certain items.
- Local authorities can also choose to access an on-line training programme when logging onto the WDF website.
- There is also an online help facility (accessible by clicking on the blue question mark beside each question), which provides further and up to date guidance on how to answer a given question.
- The helpdesk may be contacted to answer any queries either by phone on 0161 874 3602 or by email on helpdesk@wastedataflow.org
- Finally, hands-on training has been given throughout the country by the WDF helpdesk staff. Defra strongly encourages local authorities to attend these workshops, which are particularly useful to authorities that have encountered problems while entering data into WDF.

4. What levers should be implemented to ensure that WasteDataFlow is more widely used by WCAs?

WDF helps local authorities manage waste information more effectively. It is a tool for authorities to look at trends across time and to benchmark themselves against other authorities.

The reporting function

within WDF will soon be fully functional for some years and WCAs can also use it by entering monthly or quarterly data in the system. Returns of data are only required on a quarterly basis, but authorities might find it useful to enter

monthly data if they wish to use the reporting function. WDF is also a tool for authorities to provide Government with municipal waste data. WCAs and WDAs are required to work in partnership as stated in the WET Act 2003. WDAs are also required under the Landfill and Allowance Trading Scheme (England) Regulations 2004 to provide the EA with the necessary data to monitor LATS targets but cannot do so without obtaining some information from the corresponding WCAs provided both parties agree with this. The potential also exists for a WDA to view data input by their WCAs in WDF which would facilitate communication between both parties.

To obtain advice on how to do so, please contact the helpdesk on 0161 874 3602 or helpdesk@wastedataflow.org

5. What are the Freedom of Information implications for the prices traded by WDAs?

Defra is currently looking into the issue of Freedom of Information implications for the prices of allowances traded by WDAs. Any request for information on prices traded by WDAs will be considered in the light of relevant legislation.

6. Will the LATS penalty of £150 per tonne effectively drive up the most expensive disposal cost for the purpose of the recycling credits calculation?

Having worked with a group of expert local authority practitioners on proposals for the method of calculation and following a consultation on the proposals, which took place in 2005, the Clean Neighbourhoods and Environment Act gave powers to the Secretary of State to make regulation to set the method of calculation of recycling credits payments. This has allowed the method of calculation to be set to take into account factors such as increasing disposal costs and the cost of recycling.

However, there is no reason why an authority should find itself needing to pay a penalty. The whole purpose of LATS is to help authorities achieve their landfill reduction of biodegradable waste as cost effectively as possible. Purchasing additional allowances from those authorities with a surplus is proving far cheaper than the £150/tonne they would incur should they fail to hold sufficient allowances for BMW they send to landfill.

7. Has Defra issued guidance on waiving penalties, especially unforeseen circumstances?

Guidance on the circumstances in which the Secretary of State is likely to consider waiving a penalty has been published on the Defra website at: www.defra.gov.uk/environment/waste/localauth/lats/guidance.htm

8. Can Government provide advice/guidance on clauses to be put into contracts drawn up with contractors to provide data?

Defra has provided guidance on the development of standard contracts and produced a standard contract that authorities can use.

Refer to **Guidance on Trading, Borrowing and Banking Landfill**

Allowances on the Defra website at

www.defra.gov.uk/environment/waste/localauth/lats/allowance.htm **section e**
– **Contractual arrangements**

9. Will home composting be incorporated into LATS?

The Waste and Resources Action Programme (WRAP) is conducting a project that aims to develop a model to calculate the amounts of garden waste and kitchen waste that have been diverted from landfill via home composting . WRAP and the EA are currently looking into a formula robust enough to allow the EA to include the impacts of home composting in the Mass Balance Calculation (MBC).

It is vital for the Landfill Allowance Trading Scheme to have a robust monitoring system in order to ensure that the UK is able to provide the European Commission with evidence of its compliance with the Landfill Directive. Defra will need to ensure that the model is a robust system of measuring the diversion of waste through home composting before it can be incorporated into the MBC.

10. Did the 2007 Review look at new allowance allocations?

The 2007 Review of LATS focused on operational arrangements. If the Review had identified serious anomalies in the allocation of allowances that needed to be rectified, the Secretary of State has the power under Section 5 of the WET Act to do so. No such anomalies were discovered so there has been no need to review allocations.

The overall number of landfill allowances available for each year is finite. It follows that if we need to alter any authority's allocation, allowances for all other authorities will have to be recalculated as well. The Government recognises that it is important for local authorities to have certainty with which to plan their investment strategies and will only review allocations in exceptional circumstances.

11. What does the Audit Commission think about LATS?

The trading guidance was developed in discussion with the Audit Commission and is available on the Defra website at www.defra.gov.uk/environment/waste/localauth/lats/allowance.htm

12. What does “municipal waste” mean?

Municipal waste is defined in Article 2(b) of the EC Landfill Directive as:

“waste from households, as well as other waste which because of its nature or composition, is similar to waste from households.”

A paper that sets out the Government’s approach to the definition of municipal waste is available at:

www.defra.gov.uk/environment/waste/localauth/lats/guidance.htm

13. How does the Environment Agency ensure that local authorities genuinely report their waste arisings?

The Environment Agency, as the monitoring authority for LATS in England, looks for consistency in the quarterly and annual figures WDAs and WCAs return in WasteDataFlow. Since 06/07 the EA will also conduct spot checks on both randomly selected authorities as well as those that show suspiciously large reductions in landfill usage.

The annual end of year figures will also be checked against the landfill data returned by landfill operators through site returns and this data collated by the Audit Commission providing an independent view of the accuracy of data.

14. How does the end product of MBT contribute to Landfill Directives?

It is vital for the Landfill Allowance Trading Scheme to have a robust monitoring system in order to ensure that the UK is able to provide the European Commission with evidence of its compliance with the Landfill Directive.

The Environment Agency, as the monitoring authority for LATS in England, will monitor the amount of biodegradable municipal waste sent to landfill in any year by each WDA using a mass balance approach. The mass balance approach assumes that the amount of waste and of its components are constant. Where the treatment of municipal solid waste or of one or more biodegradable fractions produces a waste that is then sent to landfill, it will be necessary to assess the biodegradable content of the residue.

The EA held a consultation on “Assessing the diversion of biodegradable municipal waste from landfill by mechanical biological treatment and other options” which closed on 21 February 2005. In order to assess the relative biodegradable content of that waste which has been altered by treatment on an equitable basis. A formula agreed by all has now been adopted so that the reduction in biodegradability of each treatment process can be incorporated into the MBC.

15. What areas of waste contributed to the calculation of allowances in 2001/02? e.g. schools, parks, C&D

The allocation of allowances for every waste disposal authority is based on the total waste arisings and amounts sent to disposal, recycling, composting or recovery that were reported to Defra by each local authority in the 2001/02

Municipal Waste Management Survey.

16. Data and WasteDataFlow

a. Does information on different contractors have to be recorded separately?

Information on particular contractors is a required field in WDF. The system will guide the data entry user where necessary during the inputting process. Please contact the WDF helpline either by phone on 0161 874 6302 or by email on helpdesk@wastedataflow.org if you are experiencing problems with this.

b. Who will audit the data?

Under the WET Act the EA is required to audit the data returns from WDAs. No such audits occurred during the first year of the scheme as most authorities were struggling to understand what data was required of them. However, this confusion allowed the EA to formulate a three year programme that would see it audit all 121 authorities in England allocated allowances, starting with the most confused first. Since the second year of the scheme the EA has been auditing authorities and all 121 will have had an audit by the end of the 08/09 scheme year. Defra has and will check the validity of the data relevant to the calculation of recycling rates should that prove necessary.

c. How many reporting systems are there (MWMS, BVPIs)?

WDF replaces the Municipal Waste Management Survey (MWMS) as of 2004-05. The recycling targets set under BVPI came to an end on the 31st March 2008. DCLG introduced a new set of National Indicators from April 2008. Under this new system local authorities choose which of the National Indicators they wish to set as targets for themselves.

17. Why isn't WasteDataFlow statutory for WCAs?

WDF is a tool that enables both WDAs and WCAs to report primarily municipal waste data to government. It replaced the Municipal Waste Management Survey as of 2004-05. WDF covers the data necessary to monitor LATS and the EA will be using this tool as its preferred method for monitoring the scheme. Under LATS, reporting data to the EA is mandatory for WDAs but not for WCAs. However, WDAs will not be able to provide the EA with the necessary information without input from their member WCAs.

The 2007 LATS Operational Review did consider whether reporting to WDF should be made mandatory for WCAs. In the last couple of years data reporting has become more routine with very few authorities failing to report on time. In view of this it is felt that there is no need to make this a mandatory requirement for WCAs at this time but Defra has not ruled it out should it prove necessary in the future.

18. Will authorities be penalised if they fail to meet their targets?

LATS is designed to help authorities to meet the Landfill Directive targets in the most cost effective and flexible way and for the trading scheme to operate efficiently it is necessary for there to be a sufficient disincentive to authorities to landfill more waste than they are permitted to by the allowances they hold. Experience with other trading schemes, for example the UK Emissions Trading Scheme, has shown that without penalties, there is no incentive for participants to meet their required reductions. It would be unfair on those who comply with the scheme and purchase additional allowances if an authority which fails to meet its target is not penalised under the scheme.

The scheme is not intended to inflict major costs on local authorities, either by imposing unnecessary penalties or forcing them to take part in trading against their will. In fact, it will allow local authorities to share the burden of meeting the reduction targets and for England as a whole to meet these in the most cost effective way. Outside of the possibility of an authority receiving a penalty under LATS, there is no intention to alter allocations as a result of any failure by an authority to landfill in accordance with their allowances.

19. How can a WDA demonstrate Best Value in relation to LATS?

The Landfill Allowance Trading Scheme has been designed to enable waste disposal authorities to meet the requirement to reduce the amount of biodegradable municipal waste (BMW) sent to landfill in the most cost-effective way. Strategic long-term planning is vital if authorities are to make the most effective use of the Scheme, and authorities are strongly encouraged to consider the flexibilities provided by LATS as a potential element of a comprehensive waste strategy.

In developing or reviewing its municipal waste management strategy, a WDA should demonstrate that it is making use of LATS to achieve Best Value in the way that it meets its obligations under the Landfill Directive . The following guidance has been discussed with ODPM (DCLG-predecessor) and the Audit Commission and is structured according to the principles of Best Value - the 4C's - challenge, compare, consult and compete.

A WDA should challenge whether, and to what extent, it should use LATS to trade, bank or borrow allowances to enable it to meet its obligations under the Waste and Emissions Trading Act 2003 (the WET Act).

The WDA will need to establish whether, taking into account its wider objectives for sustainable management of municipal waste and the potential for infrastructure development, the most cost-effective solution is to:

- a) manage within its own allowances without banking or borrowing;
- b) re-profile its own allowances, by banking and borrowing;
- c) be a net buyer or be a net seller of allowances, or
- d) a combination of the above.

This assessment is likely to be pursued as part of the development or review of the WDA's long-term strategy for managing its municipal waste. It will involve comparing a number of different options for the use of LATS based on the waste strategy options available to the WDA (i.e. incorporating high, medium or low diversion of BMW from landfill).

To enable the overall cost (i.e. the total cost to the WDA of managing municipal waste, including the need to meet its obligations under the WET Act) of different options to be compared, the WDA should use a trading model such as the freely available Mass Balance Estimator and Allowance Manager (M-BEAM) which can be found at <http://lasupport.defra.gov.uk/>

As part of the process of developing its waste strategy, including any LATS trading strategy, the WDA will need to consult and engage with the local community and stakeholders. Engagement should start early and be sustained throughout the strategy development process.

If the WDA's strategy for using LATS within its overall Municipal Waste Management Strategy involves trading, the WDA will need to demonstrate that it has fully engaged with the market, looking for trading possibilities across the country (i.e. not just with other authorities in the locality) and not leaving large trades to the end of the reconciliation period (when the price of allowances may be subject to greater market pressures). Competing in this way should ensure that the WDA achieves the best price in its trades (both purchases and sales). One way of demonstrating this may be to use a broker who could engage in the market on behalf of a WDA.

To monitor achievement of Best Value, the WDA will need to review in retrospect and compare the price it paid for any allowances purchased with:

- the average price for the year;
- the average price at the time it bought its allowances (as prices could fluctuate throughout the year); and
- any penalty to which it would have been liable had it not obtained the allowances.

It may also wish to benchmark its performance under Best Value Performance Indicator 87 (cost of disposal of municipal waste per tonne) against the performance of comparable WDAs, to review the overall cost of waste disposal within the WDA's waste strategy. Guidance on BVPI87 will be revised in due course to reflect the introduction of LATS.

(Refer to **Guidance on Trading, Borrowing and Banking Landfill Allowances** on the Defra website at www.defra.gov.uk/environment/waste/localauth/lats/allowance.htm **section a – Developing a LATS strategy and demonstrating Best Value**)

20. Will the revenue received from penalties be returned to local authorities?

The Government announced its intention to return civil penalties under the Landfill Allowance Trading Scheme to local authorities during the passage of the WET Act through Parliament, subject to finding an appropriate and workable means of doing so. The Government has decided to ring-fence to waste management only a small proportion of the funds hypothecated back to local authorities through the LATS penalties system. To date no authorities have been fined for failing to report data on time or hold sufficient allowances for the amount of BMW sent to landfill.

21. How can a WDA utilise their administrative resources to manage LATS efficiently?

Trading should not be a burden to WDAs. Each local authority has different staffing structures and local authorities will utilise their administrative resources to manage LATS in different ways. Defra is looking to provide tools like the Mass Balance Estimator Allowance Manager (M-BEAM) to reduce the amount of time involved in managing LATS.

In terms of administrative costs, there will be no significant additional burden on local authorities. WDAs will need to submit the monitoring information, preferably through WasteDataFlow which is already collected quarterly rather than annually and to register any trading, banking and borrowing on the electronic register.

22. Will the income from LATS sales (sale of allowances) be ring-fenced?

Ring-fencing of any revenue received from landfill allowance trading would not be compatible with the Government's freedoms and flexibilities agenda. Government is not in a position to evaluate how funds are spent by local authorities who should reach their own decisions on utilising any LATS revenue.

23. Can WDAs operating joint contracts pool their allowances?

The Government recognises that this is an important issue for WDAs who are currently operating joint contracts with neighbouring WDAs. Government encourages local authorities to work in partnership as this can enable them to manage waste more sustainably and realise efficiency savings. Authorities are, however, responsible for meeting their own targets and the constituent authorities of the partnership can transfer allowances between themselves to ensure that they meet their targets.

Joint working between authorities should not be viewed as an alternative to engaging in the wider LATS market. In order to demonstrate Best Value the partnership should decide whether, given its combined position, it is best placed to:

- a) Manage within its own allowances without banking or borrowing;
- b) Re-profile its own allowances, by banking or borrowing;
- c) Be a net buyer or be a net seller of allowances, or
- d) A combination of the above.

Before engaging in the wider market, the constituent authorities of the partnership may wish to transfer allowances between themselves, e.g.

- If the partnership as a whole is neither in surplus or shortfall, but specific members have a surplus and shortfall,
- If the partnership as a whole is in surplus, but one member is in deficit, or
- If the partnership as a whole is in deficit, but one member is in surplus.

In order for this joint working to be fair and equitable to the constituent tax payers in each WDA, and for the WDA themselves to demonstrate that the partnership was delivering best value, this transfer of allowances should be undertaken by monetary trading at a reasonable price or non-monetary trading.