

Municipal waste, commercial waste and the Landfill Allowances Trading Scheme

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Purpose of paper

1. This paper sets out the Government's approach to the definition of municipal waste and in particular how this relates to commercial waste under the control of waste disposal and waste collection authorities. This paper aims to address the concerns and uncertainty expressed at the Landfill Allowances Trading Scheme Roadshows in July 2004.
2. Please note that the views expressed here are those of the Department, since ultimately it will be for the courts to interpret both the relevant provisions of Part 2 of the Environmental Protection Act 1990 and The Landfill Allowances and Trading Scheme Regulations for England once these are made.

Background

3. As part of Defra's communication strategy for the Landfill Allowances Trading Scheme a series of eight regional roadshows took place in July. The roadshows were held to explain the most important aspects of the scheme, the plans for its implementation and the support available to local authorities to help them meet their targets. Importantly they also provided a forum for local authorities to ask questions and raise issues for discussion.
4. One of the issues raised was the UK's approach to municipal waste, and in particular whether municipal waste should include commercial waste. Given these concerns Defra agreed to consider the potential problems identified by local authorities and in light of these to look at the current approach to municipal waste.

The current approach to municipal waste

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

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

6. The Government's view is that this definition encompasses all waste under the control of local authorities be they waste disposal, waste collection or unitary authorities. Subject to Parliamentary approval, this approach will be adopted in The Landfill Allowances and Trading Scheme Regulations for England.

7. This approach reflects waste management responsibilities in the UK and was the basis of the UK's original 1995 Eurostat Data return to the Commission. Therefore, the UK's targets set by the Directive have been calculated and will be measured using the above approach. Although member states have transposed the Directive in different ways, all member states include a proportion of commercial waste in their municipal waste arisings. In addition, municipal waste arisings figures reported to the Commission on a per capita basis are broadly consistent across comparable EU countries (Germany, France, Italy, UK and Scandinavian countries).

Commercial waste legislation

8. Waste collection authorities have a duty under Section 45(1) of the Environmental Protection Act 1990 to arrange for the collection of commercial waste where requested to do so. Section 75(7) of the 1990 Act defines commercial waste as:

“waste from premises used wholly or mainly for the purposes of a trade or business or the purposes of sport, recreation or entertainment”.

9. This definition excludes household waste, industrial waste, agricultural waste and waste from any mine or quarry. Examples of the waste that the definition includes are: office waste, restaurant or bar waste, shop waste, leisure centre waste and warehouse or site waste. This list is not definitive.

10. Waste collection authorities may recover a “reasonable charge” for the collection of commercial waste, where appropriate, and any disposal costs passed on by the waste disposal authority (Sections 45(4) and 52(9) of the 1990 Act).

11. This requirement to arrange collection when asked means that the authority is responsible for the waste even if it is collected by a private sector company. Therefore, commercial waste either collected by a waste collection authority or a private sector company on the authority's behalf is municipal waste.

Commercial waste issues

12. Most waste disposal authorities in England are responsible for a proportion of commercial waste, collected by or on behalf of the waste collection authorities. Nationally non-household waste (this includes a small proportion of industrial waste) makes up 12% of reported annual municipal waste arisings. For the majority of authorities this means between 5% and 20% of their collected waste. However, there are a number of authorities whose non-household collection is a significantly higher proportion of their waste arisings. At the extreme, for one authority non-household waste makes

up 93% of its collected waste and for another it is 64%.

13. Local authorities have an opportunity to ensure that their allocations of landfill allowances under the scheme include all commercial waste under their control in 2001/02 through the consultation on the provisional allocations, which will close on 8 October 2004.

Possible future trends

14. A number of local authorities believe that the Landfill Allowances Trading Scheme could act as an incentive for authorities to shed their existing collection services for commercial waste, or to move towards a more selective collection service. Some local authority representatives at the roadshows argued that ceasing the collection of commercial waste would result in a oneoff reduction in the authority's municipal waste arisings, making it easier for the authority to meet its allocation of allowances under the scheme. Some saw the scheme as providing an incentive for authorities to focus their services on waste which is easy/cost effective to divert from landfill which, they argued, would further encourage local authorities to shift away from commercial collections.

15. Whilst these may seem like attractive options at first sight waste collection authorities have a duty to arrange for the collection of *all* commercial waste that they are requested to collect, and private or selective collections would not remove this responsibility. The implications of this duty are set out below.

Can an authority reduce its municipal waste arisings by ceasing its collection services?

16. No. If a waste collection authority were to arrange for a private contractor to collect commercial waste within its area, the waste would still be under the control of the waste collection authority and, therefore constitute municipal waste. There are two reasons for this. Firstly, the waste would be collected as a means of meeting the authority's obligations under section 45(1)(b) of the 1990 Act. Secondly, the waste collection authority would need to ensure that the waste was delivered as directed by the waste disposal authority, or recycled in accordance with section 48(2) of the 1990 Act. Alternatively, in single tier areas the waste would need to be managed in accordance with section 51 of the 1990 Act.

17. Similarly a waste collection authority cannot evade its duty under the 1990 Act by selling off its existing collection services. Selling off an existing service is in substance no different from the waste collection authority arranging for the commercial waste to be collected by a private contractor. Thus, for the same reasons the waste formally collected by the authority

would remain under its control and would constitute municipal waste.

18. In summary, an authority cannot reduce its municipal waste arisings in either of these ways. Further, if a waste collection authority did not arrange for the collection of commercial waste where requested then the authority would be in breach of its duties under the 1990 Act.

Can an authority operate a selective service?

19. Any waste collection authority thinking of operating a selective service for commercial waste would have to satisfy themselves that they were not breaching their duties under the 1990 Act. As above, if an authority arranges for a private contractor to collect certain types of commercial waste this waste is being collected on the authority's behalf and, therefore, remains under its control.

20. If a waste collection authority declines to collect certain types of commercial waste when requested to do so, and does not arrange for its collection by a private contractor, it is likely be acting in breach of its duty.

21. As set out in paragraph 11 above waste collection authorities may recover a reasonable charge for the collection and disposal of commercial waste. Part of this charge will be to reimburse waste disposal authorities for the disposal of the waste. The Landfill Allowances Trading Scheme encourages waste disposal authorities to divert biodegradable municipal waste from landfill, so the charge may include greater disposal costs than if the waste was sent to landfill. This will not necessarily lead to local authorities being priced out of the commercial waste collection and disposal market as, whilst the Landfill Allowances Trading Scheme does not affect the private sector, the Landfill Tax Escalator means that cost increases to landfill will be reflected in private sector charges for the collection and disposal of commercial waste.

Conclusions

22. Having considered the commercial waste issues raised at the roadshows, Defra considers that there is no case for changing the UK's approach to municipal waste. In the UK, municipal waste is waste which comes under the control of waste disposal, waste collection and unitary authorities. This includes all household waste, some commercial waste and where appropriate some industrial waste.

23. Selling off an existing collection service would not absolve an authority from its duties, and the responsibilities associated with those duties, under the 1990 Act. If an authority chooses to arrange for a private contractor to collect commercial waste on its behalf, the waste collection authority would still retain

control of the waste in order to meet its obligations under the 1990 Act. It follows that the waste would still be municipal waste, so such arrangements will not result in local authorities reducing their municipal waste arisings.

24. The alternative, simply ceasing the collection of commercial waste, is likely to constitute a breach of the authority's duties under the 1990 Act.

25. Authorities which are responsible for significant amounts of commercial waste may have a different set of challenges to face under the scheme than those which are responsible for mainly household waste. However, allowances will be allocated for all commercial waste reported by a local authority in its 2001/02 Municipal Waste Management Survey return and will be reflected in the authority's allocation of allowances under the scheme.