

Guidance:
Proposals for Joint Waste Authorities in
England

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Introduction

1. This guidance consists of:
 - a. an explanation (non-statutory guidance) of the relevant legislation including:
 - i. The Local Government and Public Involvement in Health Act 2007¹ (the Act), which sets out the powers to establish joint waste authorities (Section 1);
 - ii. the Joint Waste Authorities (Proposals) Regulations 2009 (Section 3);
 - iii. general issues relating to proposals for joint waste authorities (Section 4);
 - b. statutory guidance in accordance with section 205(7) of the Act (Section 2).
2. This guidance applies in England only.

Benefits of joint waste authorities

3. The key advantage of a joint waste authority over other partnership models is that it will be a separate legal entity. This allows it to employ its own staff and enter into contracts in its own right (on behalf of constituent authorities), thus removing the need for one constituent authority to act as an 'administering' or 'contracting' authority and to take responsibility for all the liabilities and legal risks associated with that.

4. Joint waste authorities will be statutory bodies, recognised by the Secretary of State. Established by Order, they can only be dissolved in limited circumstances, thus giving them a structural stability that should appeal to the waste management industry and potential investors. Joint waste authorities will also be 'named partners' in the local government performance framework, giving them a statutory role in the negotiation and delivery of LAAs.

5. Joint waste authorities will take on the statutory reporting requirements associated with the waste function/s they discharge. Thus local authority boundaries will not need to be respected when delivering waste management services, for the purposes of data collection and reporting, thus providing opportunities for efficiencies.

Assessment of proposals for joint waste authorities

¹ http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070028_en.pdf

6. The assessment of proposals for a joint waste authority will primarily be based on whether they meet the requirements of the Joint Waste Authorities (Proposals) Regulations 2008 and the statutory guidance in Section 2 of this document.

7. Government is particularly keen to encourage the integration of waste collection and disposal services in two-tier areas. While we would not wish waste collection authorities to miss out on opportunities to realise efficiencies, proposals for collection-only joint waste authorities in two-tier areas will need to justify why involvement of their waste disposal authority in the establishment of the joint waste authority is not appropriate and demonstrate what engagement there has been with the waste disposal authority on the development of the proposals. Provision to this effect is included in the Regulations.

8. It is essential that the decision to establish a joint waste authority, and the work to develop and implement a proposal for one, has support from all the relevant areas (e.g. HR, finance, legal) within constituent authorities and that there is political endorsement at the highest level. Proposals to the Secretary of State should be accompanied by a letter of endorsement by the Head of Paid Service (usually the Chief Executive) of all the authorities that are party to a proposal.

Implementation of proposals for joint waste authorities

9. Under section 207(1), successful proposals for joint waste authorities will be implemented by secondary legislation (Orders). These Orders will be subject to the negative resolution procedure, unless the Order includes provision amending or repealing an enactment, or amending or revoking subordinate legislation which had itself been subject to affirmative resolution, in which cases the Order must go through the affirmative procedure (ie, it must be laid in draft and approved by both Houses of Parliament).

Regulations and guidance

10. Under section 205(5) of the Act the Secretary of State may make Regulations to provide what should be included in a proposal and information that must accompany a proposal. Under section 205(7) of the Act, local authorities are obliged to have regard to any guidance issued by the Secretary of State as to what a proposal should seek to achieve and matters that should be taken into account in formulating a proposal. Section 2 of this document constitutes that guidance.

11. The Act also sets out, in Sections 209 and Schedule 13, other legislative provisions that will apply to joint waste authorities. The provisions take the form of consequential amendments to other legislation which are necessary to facilitate joint waste authorities. The consequential amendments are explained in paragraphs 35 - 90.

Section 1 – Local Government and Public Involvement in Health Act 2007

12. Part 11 of the Local Government and Public Involvement in Health Act 2007 ('the Act') contains the provisions regarding joint waste authorities. Section 205 allows two or more local waste authorities to apply to the Secretary of State to establish a joint waste authority to discharge some, or all, of their waste functions. It is up to local waste authorities to decide which of their waste functions (collection, disposal and/or street cleansing) they wish to transfer to a joint waste authority. Joint waste authorities will be governed by elected members from the constituent authorities.

13. Section 206 requires local waste authorities to take reasonable steps to consult local residents and other interested parties on any draft proposals for joint waste authorities before submitting them to the Secretary of State.

14. Section 207 of the Act allows the Secretary of State to implement successful proposals by Order (secondary legislation) with or without modifications. The Secretary of State's power to modify does not extend to including areas or functions that are not specified in a proposal. But the Secretary of State does have the power to exclude functions from a joint waste authority once it is operational.

Dissolution or variation of a joint waste authority

15. Section 207(10) provides that the Secretary of State does not have the power to establish a joint waste authority in a different area from that specified in the proposal.

16. Section 207(4) provides that a joint waste authority may be dissolved by order of the Secretary of State. Section 207(5) provides that the Secretary of State may only exercise the power to dissolve a joint waste authority where all the constituent authorities so request or where the Secretary of State considers it is necessary to do so.

17. The Secretary of State's power under section 207(1) to make an order establishing a joint waste authority extends to allowing the Secretary of State to amend the order. For example, it is possible for the Secretary of State to vary an order which established a joint waste authority so that it can take on additional functions or add constituent authorities or shed functions or constituent authorities. Any such amendment would be subject to the same conditions and limitations as the legislation imposes on the making of the original order. Therefore, all the steps in sections 205 and 206 of the Act, and any other regulations, rules or guidance pertaining to them, must be followed. All the constituent authorities must agree and a proposal must be made to the Secretary of State for a restructured joint waste authority. The changes would need to have clear benefits, and would require local consultation.

18. The proposal would need to be made by all the local authorities in relation to the area of the existing joint waste authority and any new area to which it is proposed the joint waste authority be extended.

19. The Secretary of State will then decide whether to implement the proposal to amend the order. If the constituent authorities cannot agree that a joint waste authority should continue as it is but cannot agree on a proposal for how it should be varied, the Secretary of State may consider it necessary to exercise the power in section 207(4) to dissolve it.

Who can make a proposal

20. Two or more local waste authorities can submit a proposal for a joint waste authority. Only local authorities that are local waste authorities for the area specified in the proposal (i.e. they currently have one or more of the waste functions specified in the proposal) can make a proposal and a proposal may not be made if there is a local authority for the whole of the specified area which has all of the specified functions.

21. Applications from only a subset of authorities in a two-tier area will be considered on their own merits. Joint waste authorities could also be established across county boundaries, although this may be more complicated to achieve than other joint waste authorities. However, the division of responsibilities between the waste disposal and collection authorities in two-tier areas can make sustainable waste management more difficult, and integrated working is essential for effective and efficient services. Government expects authorities in two-tier areas to consider joint working initiatives that integrate collection and disposal functions and services as a priority.

22. Waste Collection Authorities can make proposals for a joint waste authority to collect waste only. However, the Government particularly encourages the integration of collection and disposal in two-tier areas. Therefore, the Regulations (at paragraph 2 of Schedule 2) require that collection-only joint waste authorities in two-tier areas must justify why waste disposal authority (WDA) involvement is not appropriate, and indicate what engagement of the WDA there has been in developing the joint waste authority proposal.

What functions can be transferred?

23. Local waste authorities will choose which 'waste functions' they propose should be transferred to a joint waste authority. Proposals will need to specify which 'waste functions' (collection, disposal, street cleansing) each constituent authority wishes to transfer to the joint waste authority. Section 205(8) sets out the waste functions which may be transferred from the relevant authorities to a joint waste authority. These are functions conferred on a local authority by or under:

- a. Part 2 of the Environmental Protection Act 1990 (c.43) (waste on land) – includes waste disposal and/or waste collection functions;
- b. Part 4 of the Environmental Protection Act 1990 (c.43) (litter etc) – includes street cleansing;
- c. section 32 of the Waste and Emissions Trading Act 2003 (c.33) (joint municipal waste management strategies) – duty to produce a joint municipal waste management strategy².

24. Authorities can transfer some or all of these functions to a joint waste authority. However, it should be noted that the entire waste function must be transferred to the joint waste authority, so that joint waste authorities will be operational bodies. The relevant enforcement functions will also transfer. For example, waste collection and disposal functions cannot be transferred to a joint waste authority for only limited activities, e.g. the strategic or contractual role. The joint waste authority will take on the duty to make arrangements for the whole waste function, e.g. for waste collection this includes delivery of collection services. Authorities wishing to establish joint working arrangements for only limited aspects of waste functions should consider alternative partnership models.

25. Flexibility on adding and shedding waste functions is covered in paragraph 17.

² The Government is currently considering next steps for statutory Joint Municipal Waste Management Strategies, in light of recent changes to the local performance framework. We plan to consult on proposals for the future of these strategies in 2009.

Section 2 – Statutory guidance on what proposals should seek to achieve and the matters authorities should take into account in making proposals

26. This section is statutory guidance made under section 205(7) of the Act and local authorities must have regard to this guidance in making a proposal for a joint waste authority in England. This statutory guidance sets out:

- (a) what a proposal should seek to achieve;
- (b) matters that should be taken into account in formulating a proposal.

What proposals for a joint waste authority should seek to achieve

27. 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. Proposals should also show how the joint waste authority will deliver environmental benefits and contribute to the wider sustainability and carbon reduction agenda. Furthermore, proposals should also ensure that a proposed joint waste authority will maintain or improve:

- a. performance against local waste authority statutory obligations for that area, e.g. LATS;
- b. the quality of waste management services delivered to residents at affordable cost;
- c. responsiveness to local issues, e.g. litter.

28. A proposal should also show how the waste authorities have consulted with residents and any other interested parties on draft proposals, explaining the context and role of the joint waste authority in contributing to the wider waste agenda. In particular the proposal should advise how the joint waste authority will increase sustainability of waste management options.

29. The joint waste authority will take on all the duties and responsibilities under the waste function(s) transferred to it. For example, for waste collection this would include strategic and commissioning/contractual roles as well as delivery of collection services and statutory duties under other regimes such as the Household Waste Recycling Act, the Hazardous Waste Regulations 2005 and the Recycling Credit Scheme. Proposals should also take account of wider responsibilities, for example those listed on the Environment Agency's NetRegs site <http://www.netregs.gov.uk/>³.

³ NetRegs was set up for Small and Medium sized Enterprises, but the regulations are the same for joint waste authorities . NetRegs tells users which legislation/regulations cover specific activities and provides a link to the relevant SI.

Matters authorities must take into account when making a proposal for a joint waste authority

Landfill Allowance Trading Scheme

30. Under the Landfill Allowance Trading Scheme tradable landfill allowances have been allocated to waste disposal authorities. These allowances convey the right for a WDA to landfill a certain amount of biodegradable municipal waste (BMW) in a specified scheme year.

31. 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 (section 209 of the Act amended section 24 of the Waste and Emissions Trading Act 2003 to achieve this) Where two or more waste disposal authorities propose to discharge their waste disposal functions to a joint waste authority, their LATS allowances will be pooled in the joint waste authority.

32. 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 a 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. It is up to the authorities to devise a system suitable to their circumstances, including whether they wish to enter into, for example, an Inter Authority Agreement which amongst other things addresses this issue, or a specific cost sharing agreement relating to this issue.

33. Waste collection authorities entering into a joint waste authority combining disposal and collection functions will wish to agree with the County where liability for such LATS penalties or fines should sit. Agreements between the constituent authorities could be used to set out the detail of liabilities in the event of financial penalties and/or fines.

34. Local authorities' statutory obligations under LATS remain a priority. The development and implementation of proposals to establish a joint waste authority should not threaten progress or planned work to comply with LATS. The Secretary of State will not use his power to waive or suspend LATS penalties as a result of any non-compliance attributed to the establishment of a joint waste authority.

Consequential amendments

35. The Act outlines the majority of the governance arrangements for joint waste authorities, aligning them with those of the six existing statutory joint waste disposal authorities. It also brings them into line with other similar bodies for other local governance issues, e.g. auditing. Section 209 and Schedule 13 set out a number of consequential amendments to existing

primary legislation which were necessary to effect the powers and duties of joint waste authorities. During the preparation of proposals for joint waste authorities, local authorities may identify further consequential amendments that they consider may be needed, in which case they are invited to contact Defra.

36. The consequential amendments achieved by section 209 and Schedule 13 are each explained briefly below. Local authorities should take their own legal advice on the application of any legislation relevant to their proposals for joint waste authorities.

Section 209

37. Section 209 of the 2007 Act amended section 24 of the Waste and Emissions Trading Act 2003 ('the WET Act 2003'). It makes joint waste authorities that have the function of disposing of biodegradable municipal waste WDAs for the purposes of Chapter 1 of the WET Act 2003. Thus local authorities' statutory obligations under LATS will automatically transfer to a joint waste authority when the waste disposal function under the Environmental Protection Act 1990 is transferred.

Schedule 13, Part 1: amendments to the Local Government Act 1972

38. Paragraph 2 of Schedule 13 amends subsections (1) and (3) of section 70 of the **Local Government Act 1972** so that a joint waste authority is bound by the 1972 Act's rules on the restriction on promotion of Bills for changing local government areas.

39. Paragraph 3 of Part 1 of Schedule 13 amended section 80(2) of the **Local Government Act 1972** in order to apply to joint waste authorities the 1972 Act's rules regarding disqualification of a person from being a member (eg. if they are subject of a bankruptcy restriction order or convictions in the UK over the last 5 years).

40. Paragraph 4 of Part 1 of Schedule 13 amended section 85(4) of the **Local Government Act 1972**, so that a joint waste authority must abide by those rules on the vacation of office following the failure of a member to attend meetings. 35.

41. Paragraph 5 of Part 1 of Schedule 13 amended section 86(2) of the **Local Government Act 1972**, so that a joint waste authority must abide by the section 86 rules on declaration of a vacancy in a joint waste authority office.

42. Paragraph 6 of Part 1 of Schedule 13 amended inserted new subsections (7A) and (7B) into section 92 of the **Local Government Act 1972** in order to extend the section 92 rules on proceedings for disqualification of members to a joint waste authority.

43. Paragraph 7 of Part 1 of Schedule 13 amended section 98(1A) of the **Local Government Act 1972**, so that the term 'local authority' includes a joint waste authority for the purposes of sections 94 and 97 of the 1972 Act, and so that a 'principal Council' includes a joint waste authority for the purposes of section 94(5)(a). Section 94 contains rules regarding the disability of members of authorities for voting on account of interest in contracts and related matters, while section 97 contains rules regarding the removal or exclusion of such disability.

44. Paragraph 8 of Part 1 of Schedule 13 amended section 100J (of the **Local Government Act 1972**). The effect of these amendments is to make a joint waste authority be treated as a 'principal council' for the purposes of section 100J(2), to apply sections 100J(3) and 100J(4)(a) to joint waste authorities.

45. Paragraph 9 of Part 1 of Schedule 13 amended section 101(13) of the **Local Government Act 1972** so that the section 101 rules on arrangements for discharge of functions by local authorities apply to joint waste authorities. This means that, in principle, a joint waste authority can discharge some of its functions to a committee, a sub-committee or an officer of the authority, or to any other local authority.

46. Paragraph 10 of Part 1 of Schedule 13 amended section 146A(1) of the **Local Government Act 1972**, so that, subject to section 146(1A), a joint waste authority shall be treated as a local authority for the purposes of sections 111 to 119, 128 to 131, 135, 136, 139 (except subsections (1)(b) and (2)), 140, 140A, 140C, 143 and 146 of the 1972 Act, and as a principal council for the purposes of section 120 (except subsection (1)(b)) and sections 121 to 123 of the 1972 Act.

47. Paragraph 11 of Part 1 of Schedule 13 amended section 175(3B) of the **Local Government Act 1972** so that, in relation to a joint waste authority, section 175 applies to a conference or meeting held and convened for the purpose of discussing matters which in the joint waste authority's opinion relate to the functions of the body or to any functions of local authorities in which the joint waste authority has an interest. The effect is principally that a joint waste authority can pay allowances to members for attending conferences and meetings to which section 175 applies.

48. Paragraph 12 of Part 1 of Schedule 13 amended section 176(3) of the **Local Government Act 1972**, so that a joint waste authority can make payment of expenses for official visits by its members.

49. Paragraph 13 of Part 1 of Schedule 13 amended section 223(2) (of the **Local Government Act 1972**) so that an authorised member or officer of a joint waste authority may appear on their behalf in proceedings before a magistrates' court and conduct any such proceedings although he is not a solicitor.

50. Paragraph 14 of Part 1 of Schedule 13 amended section 224(2)) of the **Local Government Act 1972** so as to apply the section 224 rules on the arrangements by principal authorities for custody of documents to joint waste authorities.

51. Paragraph 15 of Part 1 of Schedule 13 amends section 225(3) () of the **Local Government Act 1972** so as to apply the section 225 rules on the deposit of documents to joint waste authorities. a joint waste authority.

52. Paragraph 16 of Part 1 of Schedule 13 inserts subsection 7B into section 228(7A) (of the **Local Government Act 1972**. This amendment applies the section 228 provisions on inspection of documents to joint waste authorities.

53. Paragraph 17 of Part 1 of Schedule 13 amended section 229(8) () of the **Local Government Act 1972** so that the section 229 provisions regarding keeping photographic copies of certain documents apply to a joint waste authority.

54. Paragraph 18 of Part 1 of Schedule 13 amended section 230(2) (of the **Local Government Act 1972** so that the section 230 provisions regarding reports and returns to be sent to the Secretary of State apply to joint waste authorities.

55. Paragraph 19 of Part 1 of Schedule 13 amended section 231(4) (of the **Local Government Act 1972** so that the section 231 provisions regarding the serving of notices on local authorities apply also to joint waste authorities.

56. Paragraph 20 of Part 1 of Schedule 13 amends section 232(1A) (of the **Local Government Act 1972** so that the section 232 provisions regarding public notice required to be given by local authorities apply also to joint waste authorities.

57. Paragraph 21 of Part 1 of Schedule 13 amends section 233(11) (of the **Local Government Act 1972** so that the section 233 provisions regarding the serving of notices by local authorities apply also to joint waste authorities.

58. Paragraph 22 of Part 1 of Schedule 13 amends section 234(4) of the **Local Government Act 1972** so that the section 234 provisions regarding the authentication of documents used by local authorities apply also to joint waste authorities.

59. Paragraph 23 of Part 1 of Schedule 13 amends section 239 (4A) of the **Local Government Act 1972 so that** the section 239 provisions regarding the power to promote or oppose local or personal bills apply to a joint waste authority.

60. Paragraph 24 of Part 1 of Schedule 13 amends section 270(1) (of the **Local Government Act 1972** to insert a definition of a joint waste authority for the purposes of the 1972 Act.

Schedule 13, Part 2: amendments to other Acts

61. Consequential amendments in this part of the Schedule have been categorised and are set out in paragraphs 62 –73 .

Land/property/housing

62. Paragraph 25 of Schedule 13 amends section 69(1) of the **Landlord and Tenant Act 1954** so as to enable a joint waste authority, in certain circumstances, to change the use or occupation of property owned or held by joint waste authorities on a specified date.

63. Paragraph 26 of Schedule 13 amends section 11(4)(a) of the **Trustee Investments Act 1961** so as to apply section 11 to joint waste authorities. Section 11 enables any joint waste authority to invest property it holds in accordance with a scheme submitted to the Treasury and approved by the Treasury as enabling investments to be made collectively without in substance extending the scope of powers of investment.

64. Paragraph 27 of Schedule 13 amends section 28(5)(a) of the **Leasehold Reform Act 1967** so as to apply section 28 to joint waste authorities. Section 28 enables a joint waste authority, where it is landlord of property, to ask a Minister to certify that the property will in ten years or less be required for development (other than investment development), so that any occupant's desire to have the freehold or an extended lease in the property will be of no effect.

65. Paragraph 33 of Schedule 13 amends section 44(1) of the **Local Government (Miscellaneous Provisions) Act 1976** so as to include joint waste authorities in the definition of 'local authority' so that various provisions of the 1976 apply to joint waste authorities, for examples, the power to compulsory acquire land if a Minister agrees.

66. Paragraph 34 of Schedule 13 amends section 5(3)(bb) of the **Rent (Agriculture) Act 1976** so as to apply section 5(2) to joint waste authorities. The effect is that a person shall not at any time be a statutory tenant of a dwelling-house if the interest of his immediate landlord belongs to a joint waste authority.

67. Paragraph 35 of Schedule 13 inserts subsection (cb) into section 14 of the **Rent Act 1977** so that when a joint waste authority holds the interest of a landlord a tenancy will not be protected.

68. Paragraph 36 of Schedule 13 amends sections 2(1), 98(8A), 99(4), 100(1) and Schedule 16 of the **Local Government Planning and Land Act 1980** so as to apply these provisions to joint waste authorities. The main effects are that joint waste authorities have obligations to publish certain information, and will be subject to the provisions in Part 10 of the 1980 Act on land held by public bodies.

69. Paragraph 37 of Schedule 13 amends section 17(4)(a) of the **Acquisitions of Land Act 1981** so as to include joint waste authorities in the definition of local authority for the purposes of section 17. The effect is that where a joint waste authority objects to a compulsory purchase order, the order will be subject to special parliamentary procedure.

70. Paragraph 38 of Schedule 13 amends sections 33(9) and 41(13) of the **Local Government (Miscellaneous Provisions) Act 1982** so as to apply those provisions to joint waste authorities. The effect is to enable a joint waste authority to enforce certain covenants on land and to give it powers to deal with lost and uncollected property.

71. Paragraph 41 of Schedule 13 amends section 4(e) of the **Housing Act 1985** so as to include joint waste authorities in the definition of local authority for certain provisions of the 1985 Act, for example, in relation to secure tenancies and property owned by local authorities.

72. Paragraph 42 of Schedule 13 amends section 38 of the **Landlord and Tenant Act 1985** so as to include joint waste authorities in the definition of local authority for certain provisions of the 1985 Act, for example in regard to holding certain leases.

73. Paragraph 44 of Schedule 13 amends paragraph 12 of Schedule 1 of the **Housing Act 1988** so as to extend the provision that tenancies held by local authorities cannot be assured tenancies (which already applied to joint waste disposal authorities) to joint waste authorities.

Disclosure of Information

74. Paragraph 32 of Schedule 13 amends section 28(6) of the **Health and Safety at Work etc Act 1974** so that relevant information provided to authorised officers of joint waste authorities is exempt from section 28(2) (being the requirement that such information may not be disclosed without the consent of the person who furnished the information).

75. Paragraph 54 of Schedule 13 amends paragraph 15 of Schedule 1 to the **Freedom of Information Act 2000** so that a joint waste authority may be answerable to the Information Commissioner for its actions under the provisions of the Act.

In other Local Government Acts

76. Paragraph 29 of Schedule 13 amends section 1(4) of the **Local Authority (Goods and Services) Act 1970** so as to apply section 1 to joint waste authorities. The effect is that joint waste authorities have the power to enter into contracts for goods and services.

77. Paragraph 31 of Schedule 13 amends sections 25(1) and 26C(6) of the **Local Government Act 1974** so that Part 3 of the 1974 Act, the provisions on the Commission for Local Administration in England, applies to joint waste

authorities. The effect is that joint waste authorities will be subject to investigations by the Commission into certain complaints about them.

78. Paragraph 43 of Schedule 13 amends Schedule 2 of the **Local Government Act 1988 so as to include joint waste authorities in the list of authorities in Schedule 2**. The effect is that section 17 of the 1998 Act applies to joint waste authorities, so that a joint waste authority is under a duty, in relation to certain public supply or works contracts, to exercise any section 17 function without reference to non-commercial matters.

79. Paragraph 46 of Schedule 13 amends sections 21(1) and 152(2) of the **Local Government and Housing Act 1989 so as to extend the definition of local authorities to include joint waste authorities for certain purposes. The effect of the amendment to section 21 is to apply the provisions of Part 1 (on local authority members, officers, staff, committees, etc) of the 1989 Act to joint waste authorities. The effect of the amendment to section 152 is to apply to joint waste authorities the provisions of section 150 and 151 on powers to allow charges.**

81. Paragraph 50 of Schedule 13 amends section 1(10) of the **Local Government (Overseas Assistance) Act 1993** so as to apply section 1 of the 1993 Act to joint waste authorities. The effect is that a joint waste authority may, subject to certain conditions such as obtaining the consent of the Secretary of State, provide assistance and advice to a body carrying out local government activities outside the UK. overseas bodies engaged in carrying on any of the activities of local

82. Paragraph 53 of Schedule 13 amends section 1(1) of the **Local Government Act 1999** so that joint waste authority is a 'best value authority' for the purposes of the provisions in Part 1 of the 1999 Act. The effect is that a joint waste authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

83. Paragraph 55 of Schedule 13 amends sections 23(1) and 33(1)) of the **Local Government Act 2003 so that the provisions of Part 1 (capital finances and accounts) and Chapter 1 of Part 3 (expenditure grant to local authorities) of the 2003 Act apply to joint waste authorities.**

In miscellaneous primary legislation

84. Paragraph 28 of Schedule 13 amends section 3(2) of the **Employers Liability (Compulsory Insurance) Act 1969** so that joint waste authorities are exempt from an obligation to insure against their liability for personal injury to their employees.

85. Paragraph 30 of Schedule 13 amends section 13(7) of the **Employment Agencies Act 1973** so that a joint waste authority is exempt from all provisions of the 1973 Act, which regulates employment agencies and businesses.

86. Paragraph 39 of Schedule 13 amends paragraph 7(2) of Schedule 1 to the **Stock Transfer Act 1982 so that** a joint waste authority may transfer specified securities it issues.

87. Paragraph 40 of Schedule 13 amends section 60(3) of the **County Courts Act 1984 so that** officers of a joint waste authority are able to represent the authority in County Court proceedings.

88. Paragraph 45 of Schedule 13 amends section 144(2)(a)(i) of the **Road Traffic Act 1998 so that** a joint waste authority is not required to have third party insurance or security.

89. Paragraph 49 of Schedule 13 amends section 52(1A) of the **Environmental Protection Act 1990** so the Secretary of State may by order disapply section 52(1) in relation to any joint waste authority. Unless section 52(1) is disappplied, it will operate so that where, under section 48(2), a waste collection authority (WCA) retains for recycling waste collected by it under section 45, the waste disposal authority (WDA) for the WCA's area must make to the WCA payments, in respect of the waste so retained, of such amounts as may be determine in accordance with regulations.

90. Paragraph 52 of Schedule 13 amends Schedule 2 to the **Audit Commission Act 1998**. A joint waste authority must meet the duties and requirements in relation to required auditing of its accounts as set out in section 2 of the Act.

Section 3 – Joint Waste Authorities (Proposals) Regulations 2008

91. This section sets out guidance on the Joint Waste Authorities (Proposals) Regulations 2008 ('the Regulations'), in particular on Schedule 1, which lists the matters which must be included in a proposal and Schedule 2, which lists the information which must accompany a proposal. The bracketed paragraph numbers below refer to the relevant paragraphs of the Schedules to the Regulations.

Matters to be included in a proposal (Schedule 1)

Name of the joint waste authority (paragraph 1)

92. The proposal must provide a name for the proposed joint waste authority. This will be used in the Order establishing the joint waste authority. The name should best reflect the area that it represents, bearing in mind neighbouring waste authorities, and should be easily recognisable by the local residents it will serve. The name should also reflect the functions that the joint waste authority will be discharging where this does not include all the waste functions.

93. The name of the authority does not necessarily need to include the word 'joint', an example of a current such authority being the Merseyside Waste Disposal Authority (which is one of the six statutory joint waste disposal authorities in England).

Date of establishment (paragraph 2)

94. A proposal will need to include an indicative date on which it is proposed that the prospective joint waste authority will come into effect. This date should be a minimum of 12 months from the date of submission to allow time for the Secretary of State to consider the proposal and, where a proposal is successful, ensure the implementation mechanism is put into place. While all efforts will be made to implement successful proposals by the date specified, this may not always be possible as it is difficult to predict how long any one proposal will take to assess, determine and successfully implement. Authorities should outline any risks associated with not establishing the joint waste authority by the desired date, consider what mitigating actions they may need to take if it is not met, and identify a series of other possible operational dates in their proposal.

95. Regular dialogue will be maintained with relevant authorities on the progress and timing of applications for joint waste authorities, and, where applications are successful, the establishment date to be included in the Order.

Specified area (paragraph 3)

96. Local authorities should ensure that proposals set out the geographical area which the joint waste authority will serve.

Waste functions (paragraph 4)

97. Local waste authorities may choose which 'waste functions' will be transferred to a joint waste authority. Proposals will need to specify which 'waste functions' (collection, disposal, street cleansing) each constituent authority wishes to transfer to the joint waste authority. Section 205(8) of the Act sets out the waste functions which may be transferred from the relevant authorities to a joint waste authority. These are functions conferred on a local authority by or under:

- a. Part 2 of the Environmental Protection Act 1990 (c.43) (waste on land) – includes waste disposal and/or waste collection functions;
- b. Part 4 of the Environmental Protection Act 1990 (c.43) (litter etc) – includes street cleansing;
- c. section 32 of the Waste and Emissions Trading Act 2003 (c.33) (joint municipal waste management strategies) – duty to produce a joint municipal waste management strategy.

98. The constituent authorities will need to confirm, in the proposal, that they hold the relevant functions in accordance with section 205(3) of the Act. Proposals for joint waste authorities in two-tier areas that do not include all the local waste authorities should indicate the names of any waste authorities that are not included in the proposal and their functions.

Members (paragraph 5-7)

99. 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, in part, depend on how the constituent authorities wish to split membership between themselves.

100. Authorities will need to decide how many members each constituent authority should be represented by on the Board of the joint waste authority.

101. The number may vary between authorities. For example, in the six existing Joint Waste Disposal Authorities the number of members that each constituent authority has on its respective Board was based on population sizes of the relevant authorities at the time they were established. However, authorities may wish to use other criteria to determine membership, e.g. the Somerset Waste Board is comprised of two members from each constituent authority, giving them all equal representation and influence on the Board.

102. The Order establishing a joint waste authority will contain a duty on constituent authorities to appoint members by a specified date, on which those appointments shall take effect, and to a specified authority.

103. Authorities will need to propose a date by which first appointments of members are to be made and identify to whom these appointments should be notified. In the case of the Joint Waste Disposal Authorities, first appointments had to be notified five days after the Joint Waste Disposal Authority came into effect (although this was over the new year period). In two-tier areas it would seem practical for the nominations to be sent to the County Council, where it is a party to a proposal.

104. The date for first appointments is likely to be linked to the commencement date for a joint waste authority, e.g. first appointments to be made 5 days after the joint waste authority comes into effect.

First meeting (paragraph 8)

105. The Order establishing a joint waste authority may specify that the first meeting of that joint waste authority will need to take place a certain number of days after the date on which the joint waste authority comes into effect. For Joint Waste Disposal Authorities the first meeting had to be held within ten days of a Joint Waste Disposal Authority becoming operational. Proposals for joint waste authorities will need to specify how many days after the joint waste authorities becoming operational they wish the first meeting to be held.

106. The establishing Order will also specify that the first meeting of the joint waste authority will be treated as the annual meeting for the purposes of appointment of the Chair etc.

Voting (paragraph 9)

107. Authorities making a proposal for a joint waste authority will need to agree suitable voting procedures. They may wish, for example, to specify that the provisions regarding voting in Schedule 12 of the Local Government Act 1972 should apply. Under these provisions all questions coming or arising before a joint waste authority are decided by a majority of the members of the authority present and voting thereon at a meeting of the authority. Where the number of votes is equal the person presiding at the meeting would have a second or casting vote.

108. Constituent authorities may also wish to agree between themselves certain matters which require unanimous voting. It would be for them to specify these.

Issues which authorities might consider such voting to be appropriate for include:

- Introduction of financial incentives schemes;
- Variations in collection frequency;
- Budget setting and allocation of costs between constituent authorities;
- Other specific collection approaches.

109. The requirement for unanimity could be achieved by including a provision in the rules of procedure/standing order for a joint waste authority.

Alternatively, normal simple majority voting could apply to a joint waste authority with an explicit provision that any decisions on specific key issues could not be implemented by a joint waste authority until it had been endorsed by the full Council of each of its constituent authorities. Proposals for joint waste authorities will need to outline what voting arrangements they would like.

Staffing of the proposed joint waste authority (paragraph 10)

110. When deciding to form a joint waste authority, constituent authorities will need to consider and decide on the organisation, shape, size and staffing of the joint waste authority.

111. 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 the constituent authorities to a joint waste authority. The existing Joint Waste Disposal Authorities are managed by a Director and have their own technical, legal, IT and administrative officers. However, authorities establishing a joint waste authority may wish to consider arrangements for sharing some administrative support with their constituent authorities.

Proposals for a joint waste authority 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; and
- an indication of any planned/proposed redundancies from constituent authorities as a consequence of the establishment of the joint waste authority.

112. More detailed guidance on joint waste authorities and the employment of staff is set out in **Annex A**.

Costs (paragraphs 11 and 12)

113. The Government's position remains that precepting powers will not be available to joint waste authorities, as precepting authorities must be visibly accountable to the electorate for any monies that they raise through a precept. Joint waste authorities (similarly to Public Transport Authorities and, shortly, Integrated Transport Authorities) do have powers to make a levy on their constituent authorities, as joint waste disposal authorities may also do.

114. Formula grant will continue to be paid as usual to the relevant constituent authorities, even where a joint waste authority may be discharging waste functions of behalf of that authority. However, it is possible that the Waste Infrastructure Capital Grant could be allocated directly to a joint waste authority where it discharges the waste disposal function and where the

relevant upper-tier or unitary authority has given its consent. This should be indicated in the proposal when submitted.

115. A proposal for a joint waste authority must include detail on the funding arrangements for the proposed joint waste authority. Therefore, authorities will need to consider and determine how a proposed joint waste authority will be financed and how costs will be apportioned to the constituent authorities. Cost sharing agreements could be used to determine the share of costs between the constituent authorities, and it will be for those authorities to consider whether such an approach is appropriate to their circumstances. A variety of cost sharing models are available and could be used as the basis for discussion. It is envisaged that a cost sharing template will be available for use and adaptation by constituent authorities in 2009. As a first step authorities will need to examine and assess their key expenditure, income and assets. Expenditure is likely to include: staffing costs, operational costs, capital costs; income is likely to include revenue from chargeable collection schemes, recycling credits (see paragraphs 118 - 121) and grants; and assets are likely to include vehicles, infrastructure and bins/boxes etc. Servicing of any relevant debts (if any of the constituent authorities have debts relating to the waste functions they are transferring to the joint waste authority) will also need to be factored in.

116. Where a joint waste authority is taking on only the disposal function from two WDAs or more, then authorities may wish to consider the use of a levy whereby the joint waste authority levies funding from/charges its costs to its constituent authorities on an annual basis, mirroring the approach used by the six statutory Joint Waste Disposal Authorities. Authorities would need to consider what criteria they would use as the basis for any such levy. The current levy for Joint Waste Disposal Authorities is a tonnage-based one, i.e. the waste collection authorities' payment to the joint waste disposal authority is based on the tonnage of waste that they deliver to the joint waste disposal authority. In the joint waste authority the levy or charge would be made to the former Waste Disposal Authorities (now joint waste authority constituent authorities).

117. A levy is unlikely to be suitable for joint waste authorities taking on collection functions only or the collection and disposal functions in a two-tier area. In these situations authorities may wish to develop and use a cost-sharing agreement which uses a number of specific formulae to determine the share of costs between the constituent authorities. Any such agreement is likely to apportion the costs on the basis of tonnage or number of households per local area. This approach has been successfully used by the Shropshire Waste Partnership and the Somerset Waste Board.

Recycling Credit Scheme

118. Waste authorities entering into a joint waste authority will need to consider how their respective obligations under the Recycling Credit Scheme will be discharged by/within the joint waste authority. Two examples of possible approaches are outlined below.

Example 1 - Somerset

119. In Somerset, the County Council now acts as administering authority for the single client group, the Somerset Waste Partnership (SWP). Unusually, it is the County Council that has let the single waste and recycling collection contract on behalf of the partners. The SWP therefore pays the contractor and recovers a sum monthly from each of the districts.

120. The element of recycling credit that would have been paid by the County to the Districts is now treated as a credit in lieu and deducted from the monthly invoice to the districts. The level of credit is still related to relative tonnages collected.

Example 2 - Hampshire

121. In Hampshire, the waste collection authorities (WCAs) have, under a Memorandum of Understanding, a long-standing agreement not to claim recycling credits on material processed through the MRFs and composting sites provided by the County Council. In return, the WCAs share the income generated from sale of recyclables with the WDA's contractor. The contractor consults with a Materials Marketing Group, traditionally chaired by an officer from a WCA, over where and how material is placed on the market.

Borrowing powers

122. Although not included in Schedule 1, this advice links in with the funding sections therein. Joint waste authorities will have the same borrowing powers as normal local authorities (capital expenditure financed by self-financed borrowing or where that borrowing is part of a programme of capital expenditure approved by Defra or another Government Department - 'supported borrowing'). They will be able to borrow capital funding provided that they can demonstrate that they can service the debt.

First year of funding (paragraphs 13 and 14)

123. Joint waste authorities will need to prepare annual budgets for agreement by the Board of the joint waste authority. The joint waste authority cannot become operational in the absence of a budget so the constituent authorities will need to prepare a budget covering the period from the date of establishment of the joint waste authority to the end of the first full financial year. Proposals will need to include details of this budget and how it will be funded by the constituent authorities.

Transfer of assets and liabilities (paragraph 15)

124. Proposals will need to outline whether any assets (including any property and/or land) or liabilities need to be transferred to the joint waste authority and if so propose procedures and timing for any such transfer to occur.

125. Guidance on contractual arrangements is set out in paragraphs 132 – 138.

Information to accompany a proposal (Schedule 2)

Local authorities (paragraph 1)

126. Section 205 of the Act provides that a proposal for a joint waste authority can only be made by local waste authorities in the area specified in the proposal. It also provides that local waste authorities can only establish a joint waste authority for the functions which they already have. Proposals will therefore need to be accompanied by information confirming (a) the area of each local waste authority party to the proposals; and (b) the waste functions conferred on each local authority party to the proposal.

Exclusion of waste functions (paragraph 2)

127. Any authority in England can become part of a joint waste authority. However, the Government is particularly keen to encourage the integration of collection and disposal in two-tier areas. Therefore paragraph 2 of Schedule 2 of the Regulations provides that collection-only joint waste authorities in two-tier areas must justify why WDA involvement is not appropriate, and indicate what engagement of the WDA there has been in developing the joint waste authority proposal. In particular, written reasons for the decision to exclude the WDA functions must be submitted with the proposal, together with the business case supporting the decision to exclude the WDA, including details of any anticipated benefits for excluding the disposal function, and also any anticipated negative consequences of that decision and how these will be managed. Details of consultation and engagement with the WDA must include issues identified during the consultation or engagement, and explain how those issues have been, or will be, addressed.

Letter of approval (paragraph 3)

128. Paragraph 3 of Schedule 2 of the Regulations requires that for every local authority making the proposal, a letter from the Head of Paid Service, confirming that the local authority has approved the making of the proposal, must accompany the proposal. The Head of Paid Service is usually the Chief Executive.

Consultation (paragraph 4)

129. Proposals for a joint waste authority will need to be accompanied by a summary of how the consultation requirements of section 206 of the Act have been met. Section 206 requires local authorities to take reasonable steps to consult 'relevant electors' and 'any interested person in the authority's areas' on a draft of the proposal. The types of stakeholder captured by 'any interested person' include waste management operators in that area and any neighbouring local waste authority that is not part of the proposal. Proposals

should also show how the authorities are communicating to them the context and role of the joint waste authority in contributing to the wider waste agenda, particularly with respect to increasing sustainability of waste management options.

130. The summary of the consultation must also include the issues raised by respondents during the consultation and details of how those issues were addressed in finalisation of the proposal.

Other joint working arrangements (paragraph 5)

131. Proposals for joint waste authorities will need to be accompanied by information which demonstrates the joint working experience of the authorities submitting the proposal. The types of information that should be included are: a description of the nature of any existing/previous partnership, e.g. memorandum of understanding, joint committee; the types of activities undertaken through partnership working, e.g. development of joint municipal waste management strategy, procurement of goods and services; and the duration of any joint working arrangements.

Contracts (paragraph 6)

132. A joint waste authority will have the ability to enter into contracts with third parties on behalf of its constituent members. However, it is recognised that authorities wishing to establish a joint waste authority are likely to have different existing arrangements for waste contracts (e.g. third party contracts or direct service organisations) and that contracts are likely to end at different times.

133. Authorities looking to establish a joint waste authority will need to consider how any existing waste collection, disposal and other relevant contracts will be managed in relation to the establishment of the joint waste authority.

134. Proposals will need to be accompanied by information on all waste contracts which either exist or are expected to exist when the joint waste authority would be established. 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 joint waste authority, should the proposed joint waste authority be established; and
- the reasons why any existing contract existing before the establishment of a joint waste authority will not be continued, should the proposed joint waste authority be established.

135. The draft regulations referred to information relating to the waste management contracts that will need to be provided in a JWA proposal. In particular we proposed in paragraph 4(2) that a threshold of £139,893 per

annum based on that in the Public (Contracts) Regulations 2006, be used to determine which contracts information was required. Whilst around half of consultation respondents were supportive of the proposed threshold, and we committed to retain it in our response, we have now removed it following further consideration. This is because the threshold is likely to change over time and is only a very approximate indicator of whether a contract is significant. We have therefore removed this provision from the Regulations.

136. Joint waste authorities may wish to consider each of their contracts in terms of its significance to the waste functions being transferred. When assessing the value of contracts authorities might want to use the thresholds set out in the Public Contracts Regulations 2006 as a rough indication to the significance of the contract.

137. Joint waste authorities may wish to take legal advice to support a disclosure of information to government bodies and assignment clauses/provisions.

Value of Contracts

138. Along with the information required by paragraph 6 of Schedule 2 to the Regulations, the Government would find it helpful to know the value of contracts that the authorities propose to transfer. When deciding whether to provide this information as part of a proposal authorities should have regard to whether this information is commercially sensitive and should note the Government's obligations to disclose information requested under Freedom of Information provisions, or some other operation of law.

Landfill obligations (paragraphs 7 and 8)

139. Section 209 of the 2007 Act amends section 24 of the Waste and Emissions Trading Act 2003 ('the WET Act 2003') so as to make any joint waste authority that has the function of disposing of biodegradable waste the WDA for the purposes of Chapter 1 of the WET Act 2003. Thus local authorities' statutory obligations under the Landfill Allowance Trading Scheme (LATS) will automatically transfer to a joint waste authority when the waste disposal function under the Environmental Protection Act 1990 is transferred.

140. One consideration when a group of authorities is deciding whether or not a joint waste authority is the best way forward for them will be the impact (ie. the reduction) on the amount of waste sent to landfill. Beyond the reduction in the amount of material sent to landfill, there are no specific benefits with regard to LATS. The number of allowances available to the country is set, so the number of authorities that hold allowances does not affect the scheme.

141. Improvement in LATS performance is driven either by a reduction in the amount of Biodegradable Municipal Waste sent to landfill, or a reduction in the cost of sending the same amount of waste to landfill, or both. From a

LATS point of view it is the economies of scale that offer the greatest advantages.

142. As outlined in paragraphs 31-32 of Section 2 of this guidance, where it is proposed to transfer waste disposal functions to a joint waste authority, that joint waste authority will take on the responsibilities under LATS and the necessary changes will be made to the LATS Register at the time the joint waste authority is established. Where two or more waste disposal authorities propose to discharge their waste disposal functions to a joint waste authority, their LATS allowances will be pooled in the joint waste authority.

143. Where WCAs from different WDA areas form a collection-only joint waste authority, they will need to agree which WDAs will have responsibility for disposal. They will also need to agree this with the relevant WDAs. The decision may be influenced by the type of waste the joint waste authority will collect (for example, waste from street cleaning or commercial waste). However, none of these cases would require a change to the allowances held by any of the WDAs involved, as the LATS register already allows for non-financial (or in kind) transfers of allowances.

144. The joint waste authority will be liable for any financial penalties or fines as a result of non-compliance with the LATS. Proposals for a joint waste authority taking on the disposal functions will need to include details about how liability for any penalties and fines will be shared amongst the constituent authorities, e.g. how payment would be made in the event of a penalty or fine being imposed.

145. It is recognised that the negotiation arrangements for payment for any penalty imposed on the joint waste authority for breach of obligations under the Landfill Allowance Trading Scheme may take considerable time to finalise. A formal agreement on LATS penalties is not required at the time that a proposal for a joint waste authority is submitted, and any such agreement will, in any event, be subject to the joint waste authority being established. However, if such an agreement is in existence, it must be included with the proposal. If an agreement on liability for LATS penalties or fines has not been produced, the joint waste authority proposal should contain:

- confirmation that such an agreement is being prepared
- details of its proposed content and
- details of the timetable for finalising the agreement.

If an agreement has been produced in draft, this may be submitted with the proposal.

146. WCAs entering into a joint waste authority combining disposal and collection may wish to agree with the County Council where liabilities for non-compliance with LATS should rest.

147. The approach used by the Somerset Waste Partnership when establishing their section101 (Local Government Act 1972) Joint Committee

(the Somerset Waste Board⁴) provides a useful example. The powers, duties and functions of the waste disposal authority in respect of sections 6 to 8 of the WET Act 2003 remain with Somerset County Council (SCC). This covers responsibilities for banking, borrowing and trading and liabilities for the purchase of allowances or payment of any penalties arising as a result of exceeding allowances. SCC retain any income received from LATS trading.

148. The powers and duties under sections 9, 31 and 32 of the WET Act 2003, which cover the duty not to exceed allowances, powers of direction and municipal waste management strategies, have been delegated to the Somerset Waste Board. Under the inter-authority agreement for the Somerset Waste Board it has been agreed, by all the constituent authorities, that the Board will work in close consultation with and support and advise SCC with regard to trading under LATS. SCC undertake to work in close consultation with and support and advise the Single Client Group⁵ and the Board with regard to the waste strategy implications of its trading activities and plans.

Private Finance Initiative (PFI) credits (paragraphs 9 and 10)

149. Proposals will need to be accompanied by information regarding any waste PFI credits. The proposal should include:

- the date of the award of the PFI credits;
- names of the local authorities that may share the benefit of those PFI credits;
- any conditions contained within any letter awarding PFI credits;
- advice on whether any of the PFI credits are to be phased and, if so, the level of credit for each phase and when support for each phase will start;
- details of any correspondence with Defra in relation to the transfer of the amounts relating to the PFI credits to the proposed joint waste authority⁶.

150. PFI contracts do not generally allow a local authority to assign or transfer its rights or obligations under the contract without the consent of the contractor. However, a recognised exception is where the transfer taking place is to another local authority with sufficient financial standing or resources, or another public body whose obligations are guaranteed by the local authority (e.g. a joint waste authority). This would normally only be feasible where the whole of the contract is being transferred.

Cost savings (paragraph 11)

⁴ Comprised of Mendip District Council, Sedgemoor District Council, South Somerset District Council, Taunton Deane District Council, West Somerset District Council and Somerset County Council.

⁵ A group of officers employed by SCC in their capacity as the Administering Authority for the Somerset Waste Board

⁶ Constituent Authorities who are considering establishing a joint waste authority and who are in receipt of PFI credits should contact the Defra Waste Infrastructure Delivery Programme at WIDP.ProgrammeOffice@defra.gsi.gov.uk at an early stage.

151. Proposals must be accompanied by information highlighting any anticipated cost savings to be made by the constituent authorities as a result of the establishment of the proposed joint waste authority and an indication of where these savings will be made and over what time period.

Environmental benefits (paragraph 12)

152. Proposals must be accompanied by information highlighting any anticipated environmental benefits of establishing the proposed joint waste authority (e.g. increased recycling).

Waste management services (paragraph 13)

153. Proposals from authorities will need to be accompanied by information to demonstrate how the current standard of waste management services to all local residents will be maintained or improved. This could include, for example, their plans to better integrate the management of household and business waste.

Communications strategy (paragraph 14)

154. Proposals from authorities must be accompanied by a communications strategy for engaging with local residents and other interested stakeholders – to include how the establishment of a joint waste authority will be communicated. Proposals should also show how the authorities are communicating with them the context and role of the joint waste authority in contributing to the wider waste agenda, particularly with respect to increasing sustainability of waste management options.

Section 4 – General issues relating to the establishment of a joint waste authority

155. This section provides additional guidance on issues that authorities developing proposals for joint waste authorities may find useful.

Municipal Waste Management Strategies

156. Joint waste authorities will be new statutory bodies, i.e. separate legal entities. This means that they will develop their own municipal waste management policies and strategies as appropriate.

Enforcement

157. Joint waste authorities will take on any enforcement powers associated with the waste functions transferred to them.

Waste reporting

158. Joint waste authorities will take on responsibility for any of the reporting obligations associated with the waste function being transferred to them. Thus reporting in the joint waste authority will be on one set of data for the whole area, which in the long term could deliver efficiencies. Waste Data Flow will be changed, as required, to reflect the new reporting arrangements that come with a joint waste authority.

Disposal functions

159. Where a local authority transfers its waste disposal functions to a joint waste authority the joint waste authority will take on the reporting obligations under the LATS Regulations (i.e. to report using Waste Data Flow) as the 'new' waste disposal authority. Changes to the Waste Data Flow database will need to be made to reflect any such joint waste authorities.

160. Where two or more waste disposal authorities decide to discharge their waste disposal functions to a joint waste authority then changes will also need to be made to the LATS Register.

161. As of 1 April 2008 waste disposal authorities are required to submit annual reports on national indicators NI 191⁷, NI 192⁸, and NI 193⁹. Where it has waste disposal functions a joint waste authority will be responsible for this reporting requirement.

Waste collection functions

⁷ NI 191 - Kg/household of residual household waste

⁸ NI 192 - Percentage of household waste reused, recycled and composted

⁹ NI 193 - Percentage of total municipal waste landfilled

162. As of 1 April 2008, waste collection authorities are required to submit annual reports on national indicators NI 191, NI 192, NI 193 and NI 196¹⁰. Where two or more waste collection authorities are transferring their waste collection functions to a joint waste authority, the joint waste authority will take on responsibility for this reporting requirement. A joint waste authority may wish to realise efficiencies by employing integrated collection contracts which disregard district/Borough boundaries. In these circumstances a joint waste authority would be able to submit an annual report on the relevant national indicators for the collective area, rather than individual Boroughs. Again, changes to the Waste Data Flow database will need to be made.

Street cleansing functions

163. As of 1 April 2008, local authorities (single tier or districts/Boroughs) are required to submit annual reports on the national indicator NI 195¹¹. Where it has litter collection and disposal functions a joint waste authority will be responsible for this reporting requirement.

Best Value Authorities

164. As best value authorities joint waste authorities are under a general duty to "make arrangements to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness". They will also be subject to the "duty to involve" - see paragraphs 128-130.

Duty to involve

165. The Local Government and Public Involvement in Health Act 2007 introduced the duty to involve, which is due to come into effect on 1 April 2009. The duty applies to all best value authorities in England, except police authorities. It will require authorities, where they consider it appropriate, to inform, consult and involve "representatives of local persons", as appropriate, in the exercise of authority functions. It will be for authorities themselves to determine what arrangements they make to fulfil both duties, ie: when and how representatives of local persons should be involved.

166. The phrase 'representatives of local persons' refers to a mix or selection of those individuals, groups or organisations considered by the authority likely to be affected by, or interested in, a particular authority function; in other words, a selection of the citizens and communities that the function has an impact on. This will vary depending on the type of authority, policy or service area, but could include those that live in an area, visit it, or use a particular service, as well as local voluntary and community groups and businesses.

¹⁰ NI 196 - Improved street and environmental cleanliness – fly tipping

¹¹ NI 195 - Improved street and environmental cleanliness (levels of graffiti, litter, detritus and fly posting)

167. Authorities must have regard to any statutory guidance. This currently can be found in '*Creating Strong, Safe and Prosperous Communities - Statutory Guidance*' published by CLG in July 2008 (see: <http://www.communities.gov.uk/publications/localgovernment/strongsafeprosperous>).

Local Performance Framework

168. Joint waste authorities are also named in the Local Government and Public Involvement in Health Act 2007 as partner authorities for the purposes of the local performance framework. The 2006 Local Government White Paper *Strong and Prosperous Communities* introduced major changes in the way that national government, local authorities and local service providers work in partnership to deliver better services and an improved quality of life for local people. The local performance framework changed from 1 April 2008 and now provides local government with further freedoms and flexibilities. Local area agreements (LAA), together with the sustainable community strategy and spatial development strategy, will set out the vision and delivery priorities for each place. Local Strategic Partnerships are the forum through which the vision and priorities will be agreed and to co-ordinate partner's activities and drive service improvement. The comprehensive area assessment (CAA) will replace the comprehensive performance assessment (CPA), and inspections will be more targeted and based on risk. The new performance system will reduce the number of targets and indicators and allow authorities and their partners more freedom to tackle the key priorities.

169. Under the new performance framework authorities and their partners will report annually on a set of 189 national indicators, and will negotiate with central government to identify up to 35 indicators against which to set LAA targets. The current round of local area agreements was signed in June 2008. They will be reviewed on an annual basis and will be renegotiated every three years.

Local Area Agreements

170. Under the new performance framework local authorities and their partners will report on 189 nationally agreed indicators, three of which are on waste and two on local environmental quality. Each LAA will include up to 35 local improvement (designated) targets drawn from the national indicator set, agreed between local authorities, their partners and central government. Local authorities and their partners can also agree to include additional targets in their LAAs if they wish, but these will not be monitored by central government.

171. Under section 104 of the Local Government and Public Involvement in Health Act 2007 joint waste authorities are defined as a 'partner authority'. As a partner authority a joint waste authority 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 such designated targets in a LAA. Joint waste authorities will also have to have regard to any

LAA targets it has agreed. Communities and Local Government are currently finalising statutory guidance on the duties of partner authorities¹².

172. Where the geographical scope of a joint waste authority crosses county boundaries, e.g. a joint waste authority between two waste disposal authorities or between neighbouring waste collection authorities in different counties, then it would be a 'partner authority' in the negotiation and delivery aspects of the LAAs in both areas. It will be up to the joint waste authority to negotiate sensible targets in such a situation. A multi area agreement (see paragraphs 118-119) on waste might also offer an alternative approach for such situations.

173. As noted earlier a joint waste authority will take on reporting obligations for LAA indicators and targets for the waste functions which it has been established to discharge.

174. Additional information on Local Area Agreements can be found on the CLG web pages at <http://www.communities.gov.uk/localgovernment/performanceframeworkpartnerships/localareaagreements/>.

Multi Area Agreements (MAAs)

175. Multi area agreements are non-statutory agreements between two or more top-tier councils, their local partners including district councils, and Government.

176. There are three ways in which targets in MAAs may be linked to those in LAAs and thus appear in both agreements:

- targets in MAAs based on indicators in the National Indicator Set may also be included in LAAs as one of the up to 35 designated LAA targets As the target would be part of the LAA as well the MAA, it would automatically be subject to the statutory duties which apply to LAAs;
- targets in MAAs based on indicators in the National Indicator Set could alternatively be included in the LAA as voluntary local targets and as such still be subject to the statutory duties which apply to LAAs; and
- targets in MAAs which are based on indicators not in the National Indicator Set (e.g. Gross Value Added) could also be included in LAAs, but only as voluntary local targets. As a local

¹² Information on the consultation on draft statutory guidance can be found at: <http://www.communities.gov.uk/publications/localgovernment/statutoryguidance>

target in the LAA, the statutory duties which underpin LAAs would apply.

177. MAA targets do not, however, have to appear in LAAs. Where they do not, no statutory duties will apply to them.

Comprehensive Area Assessments

178. Comprehensive Area Assessments will replace the Comprehensive Performance Assessments from 1 April 2009. The inspectorates (e.g. Audit Commission) have recently consulted jointly on the framework for the CAA¹³. A further, more detailed consultation on methodology, took place in summer 2008 and inspectorates will publish their final methodology in February 2009. It is not yet clear how CAAs will affect joint waste authorities.

179. The Audit Commission has finalised major revisions to its approach to local housing, environment and culture service inspections. The new methodology is set out in the document 'Approach to Service Inspections'.
<http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=ENGLISH^576^SUBJECT^115^REPORTS-AND-DATA^AC-REPORTS&ProdID=78F62C1A-D68F-4ce0-8276-631A8BAC1B47>

180. The Audit Commission has also published its KLOE (Key Lines of Enquiry) for waste management at <http://www.audit-commission.gov.uk/kloe/downloads/KLOEEnvironmentWaste.doc>

181. Additional information on Comprehensive Area Assessments can be found on the CLG web pages at <http://www.communities.gov.uk/localgovernment/performanceframeworkpartnerships/inspectioncomprehensive/>.

Overview and Scrutiny

182. Under section 21 of the Local Government Act 2000 the overview and scrutiny committee of any constituent authority of a joint waste authority will retain overview and scrutiny powers over a joint waste authority for its activities in their area.

183. Once part 5 of the Act has been brought into force, overview and scrutiny committees will have new statutory powers. Under these powers overview and scrutiny committees will be able to require information from and send reports to 'partner authorities'. In turn partner authorities will have to 'have regard to' such reports. Joint waste authorities are partner authorities by virtue of section 104 of the Act.

184. In addition, where authorities established a joint waste authority for collection and disposal functions in a two-tier area they may have the

¹³ Available at: <http://www.audit-commission.gov.uk/caa/index.asp>

¹⁵ Available at <http://www.audit-commission.gov.uk/caa/downloads/CAAConsultation08.pdf>

opportunity to establish a joint overview and scrutiny committee if they wish. Section 123 of the Act provides for secondary legislation for the establishment of joint scrutiny committees between a county council and one or more of its constituent districts and to provide for the type of information which 'partner authorities' must/may not provide to such a joint committee. The responses to a consultation on proposals to implement the 2007 Act provisions and regulating for joint overview and scrutiny committees (Improving local accountability consultation: August to October 2008) are being analysed and it is expected that legislation implementing these provisions will follow in due course.

Code of Conduct/Standards Committee

185. A joint waste authority will not have its own code of conduct or standards committee¹⁴. However, the conduct of members of joint waste authorities will be covered by the provisions of the code of conduct of the constituent local authority to which each joint waste authority member belongs. Any misconduct allegations made against a member of a joint waste authority will be considered by their constituent authority's standards committee. Further details about the provisions of the code of conduct and the conduct regime for local authority members is available on the Standards Board for England's website at www.standardsboard.gov.uk.

¹⁴ However, the Government may consider, after the establishment of the first joint waste authority(ies), whether to review the application of the local authority members' code of conduct and the associated conduct regime to JWAs.

Joint Waste Authorities : Employment of staff

1. Joint waste authorities will be employing organisations. Where services/functions/roles/duties transfer from the current provider to a new provider, either during the creation of a joint waste authority or following contracting/re-tendering exercises post vesting, then the staff working in these areas are likely to transfer to the joint waste authority. Accordingly, the TUPE Regulations 2006¹⁵ and COSOP¹⁶ are likely to apply. Legal advice should be sought in each case in order to determine the employment terms and conditions of each affected staff member..

2. Broadly speaking, the effect of TUPE (and therefore COSOP) is to preserve the continuity of employment and contractual terms and conditions of those employees who are transferred to a new employer when a relevant transfer takes place. This means that employees employed by the previous employer (the “transferor”) when the transfer takes effect automatically become employees of the new employer (the “transferee”) on the same contractual terms and conditions. It is as if their contracts of employment had originally been made with the transferee employer.

4. The transferee takes over the liability for all statutory rights, claims and liabilities arising from the contract of employment, for example, liabilities in tort, unfair dismissal and discrimination claims. The exception to this rule applies to criminal liabilities.

5. The TUPE regulations place a number of requirements on the organisations involved, as follows:

Informing and consulting with staff and/or their representatives

- The relevant Trade Unions are entitled to be informed about the transfer. The details that must be shared with them include:
 - The fact that a TUPE/COSOP transfer is taking place;
 - When it is going to take place;
 - The reasons for the transfer;
 - The legal, social and economic implications of the transfer on affected staff;
 - Any measures which the current or future employer envisages taking in relation to affected staff (and if no measures are going to be taken, then this must be made explicit)
 - If no measures are to be taken then there is only a duty to inform employees and/or their representatives of the transfer.

¹⁵ The Transfer of Undertakings (Protection of Employment) Regulations 1981

¹⁶ The Cabinet Office Statement of Practice on Staff Transfers in the Civil Service 2000

- Where measures are going to be taken then consultation with the relevant Trade Unions must take place.

Exchange of employee liability information

The current employer is required to provide to the new employer specific information on the employees who will be transferring (often called employment liability information or employee due diligence information). This is as follows:

- the identity of the employees who will transfer;
- the age of those employees;
- information contained in the “statements of employment particulars” for those employees (e.g. contracts of employment);
- information relating to any collective agreements which apply to those employees (e.g. contractual policies);
- instances of any disciplinary action within the preceding two years;
- instances of any grievances raised by those employees within the preceding two years;
- instances of any legal actions taken by those employees against the transferor in the previous two years, and instances of potential legal actions which may be brought by those employees where the transferor has reasonable grounds to believe such actions might occur.

6. It is therefore important to clearly and transparently identify which staff are in scope for transfer. Joint waste authorities will need to consider staff on maternity/paternity/adoption leave, long-term sickness absence, loan/secondment and career break.

7. An employee has the right to object to the automatic transfer of their contract of employment. If they exercise this right the objection terminates the contract of employment; the employee is considered to have resigned.

8. Rights under an occupational pension scheme do not transfer. The new organisation does not have to provide equivalent pension benefits, however there is a minimum level that needs to be provided. It is recommended that advice on pension schemes is sought in each instance.

9. COSOP also places an additional responsibility on public sector employers to make efforts to provide an opportunity for those who wish to stay in or return to their original organisation to be able to do so.

10. Authorities cannot make staff redundant on the basis of the creation of a joint waste authority. However, redundancies may be permissible where there are economic, technical or organisational reasons for doing so. Authorities making redundancies in light of the creation of a joint waste authority will need to act in accordance with the Local Government (Early

Termination of Employment)(Discretionary Compensation) (England and Wales) Regulations 2006¹⁷.

11. Authorities will wish to involve their legal teams, and consult the relevant trade unions, at an early stage when developing their proposals on staffing for a joint waste authority.

¹⁷ The Local Government (Early Termination of Employment)(Discretionary Compensation) (England and Wales) Regulations 2006, S.I. 2006/2914