DEFRA CONSULTATION ON JOINT WASTE AUTHORITIES

SUMMARY
Defra is consulting about the implementation of new powers to establish joint waste authorities, though it is not thought they will be put to use in the WLWA area.

RECOMMENDATION
That the information in this report be noted.

DETAIL
1. The Local Government and Public Involvement in Health Act 2007 s.205 has introduced new powers for the Secretary of State to establish joint waste authorities if he agrees with proposals made to him by the waste authorities concerned.

2. These new powers are about to come into force, and on 17 March Defra issued a consultation paper about the detailed implementation, including consultation on draft Regulations and on draft statutory guidance. The response date is 9 June 2008.

3. The powers allow two or more local authorities to submit proposals to the Secretary of State to transfer one or more of their waste functions (waste collection, waste disposal and/or street cleansing) to a new joint waste authority. The Secretary of State may make Regulations governing the matters and information to be included in a proposal. He may also issue guidance as to what a proposal should seek to achieve and matters to be taken into account in formulating a proposal. Authorities will be obliged to have regard to any such guidance in making their proposals.

4. The consultation paper is attached at Appendix A for Members’ information. Except to correct some factual errors that appear in the draft guidance, it is not proposed that a formal Authority response be sent since it seems unlikely that these new powers will be put to use in the Authority’s area. WLWA already is a joint authority for the discharge of the area’s waste disposal functions. Whilst it becomes possible under the new powers to establish a joint authority for waste collection as well as disposal (or for two or more of the constituent boroughs to form a joint waste collection authority), this has always been possible through the provisions of Local Government Act 1985 s.10 under which the Authority and the other five statutory joint authorities (SJWDAs) are established. Accordingly, the new powers do not change the legislative position significantly for the areas of the existing SJWDAs.

5. From the requirements of the draft Regulations attached at Appendix B, it seems likely that establishing a joint waste authority will be an onerous and lengthy task. Unanimous agreement amongst all the authorities involved will be needed on all the details the Regulations will require to be included in a proposal – including unanimous agreement on cost sharing.

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<th>Background Papers</th>
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1 Available from www.defra.gov.uk/corporate/consult/jwa/
Defra Consultation on proposals for joint waste authorities in England

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Introduction

1. The Local Government and Public Involvement in Health Act 2007 set out powers to allow for the establishment of joint waste authorities in England. Two or more local authorities may submit proposals, to the Secretary of State, to transfer waste collection, disposal and/or street cleansing functions to be discharged by a joint waste authority. Successful proposals will be implemented by Order.

2. The Act provides that the Secretary of State may make Regulations and guidance to provide a framework for proposals for joint waste authorities. This consultation seeks views on draft Regulations and draft guidance on proposals for joint waste authorities.

Background

3. Waste is cited as one of the top pressures on council tax, and therefore realising efficiencies is a priority. In England, partnership working is one of the ways local authorities can realise efficiency savings; the Department for Communities and Local Government’s Strategic Partnering Taskforce’s final report, published in 2004, described strategic partnerships as one of the main service delivery options available to local authorities in their quest for efficient and effective high quality services.

4. Many of the interventions needed to deliver sustainable waste management rely on action at a broader geographic scale than a single local authority. There are potential efficiency savings to be gained, particularly for smaller authorities, by working in partnership with neighbouring authorities. Research for Defra suggests most local authorities could benefit from economies of scale through cooperating with other authorities including between counties and unitaries, as well as between districts, when procuring new waste treatment facilities.

5. In England, the separation of decision-making powers and funding streams in two-tier areas can significantly inhibit the efficiency of the waste management function. The Local Government White Paper highlighted the need for local authorities to work together, particularly in two-tier areas, in order to deliver improved accountability and leadership, increased efficiency and improved outcomes.

6. In particular, the integration of waste collection and disposal services has the potential to create greater efficiencies and lower burdens. A Joint Working in Waste project, run through the Innovation Forum by a group of

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1 It is planned that these powers will be commenced through a Commencement Order on 1 April 2008.
2 http://www.communities.gov.uk/publications/localgovernment/strategicpartneringtaskforce
4 http://www.communities.gov.uk/publications/localgovernment/strongprosperous
excellent-rated authorities (in the Comprehensive Performance Assessment), was set up in December 2004 to identify and propose solutions to barriers to joint working between local authorities. The final report published in July 2006\(^5\) highlights the many benefits of joint working on waste. It also called for legislative changes to make partnership working easier.

7. One of the key barriers to joint working identified by the Innovation Forum report was the limited legal basis for joint working arrangements. This can create difficulties when authorities are dealing with the private sector (i.e. private waste contractors and financial institutions). A mechanism which allows authorities to enter into a legal commitment to work together with a statutory basis gives increased certainty to potential lenders and contractors.

8. A further problem with existing partnership models is that a single authority within the partnership is required to take responsibility for employing staff and signing contracts. A further benefit from joint waste authorities would be that the individual authorities would no longer need to separately report statistics – which in itself would allow for greater joint working (e.g. running waste collection trucks across authority boundaries, as there would be no need to measure waste separately).

9. In response to the Innovation Report, and other requests from local government, powers to establish joint waste authorities were included in Part 11 of the Local Government and Public Involvement in Health Act 2007\(^6\) (‘the Act’). Under these powers local authorities that wish to work together with other authorities to discharge their waste functions can submit a proposal requesting the establishment of a statutory joint waste authority (JWA).

10. Any authority in England can become part of a JWA. However, the main focus of these powers is to facilitate the integration of waste collection and disposal functions particularly in two-tier areas although it is recognized that other groupings of authorities may wish to use these powers to work together on waste.

11. We envisage that most JWAs would take on waste collection and/or disposal functions, but authorities may also wish to discharge their street cleansing functions to a JWA. The whole waste function would be transferred, thus a JWA cannot be established merely as an authority to jointly work on strategic issues (although a JWA would need to develop its own municipal waste policies and strategies); JWAs will have operational functions. Other partnership models can be used for joint working solely on strategic issues.

**Support to local authorities to develop and implement proposals for joint waste authorities**

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\(^5\) [http://www.idea.gov.uk/idk/aio/4821783](http://www.idea.gov.uk/idk/aio/4821783)

12. Defra has allocated £500,000 for 2008/09 to support the development of proposals for joint waste authorities. It is anticipated that further funding will be allocated for the following two years. Precise details of how the funding will be distributed are still being developed and will be put on the Defra website during the consultation period. However, it is envisaged that a large proportion of the funding will be distributed between a small number of interested local authority partnerships that are committed to developing a proposal to establish a joint waste authority to support them in this work. Local authorities interested in establishing a joint waste authority should contact LAWFG@defra.gsi.gov.uk.

**Responding to this consultation**

13. This consultation starts on Monday 17 March 2008 for 12 weeks. Responses should be received **no later than Monday 9 June 2008**. This consultation has been prepared in line with the Government’s code of practice. This can be found at: http://www.berr.gov.uk/bre/consultation%20guidance/page44420.html

14. Responses should be sent by email to LAWFG@defra.gsi.gov.uk, fax 020 7238 4858 or by post to Local Authority Waste Funding and Governance Team, Department for Environment, Food and Rural Affairs, Area 6C, Ergon House, Horseferry Road, London SW1P 2AL. Please make sure that any e-mail responses are clearly marked ‘Joint Waste Authorities – Consultation Responses’.

15. In your response, please explain who you are and, where relevant, whom you represent and give your name and appropriate contact details.

16. In line with Defra’s policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. The information they contain may also be published in a summary of responses.

17. If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request. You should also be aware that there are circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.

**Enquiries and Complaints**

18. The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel: 020 7238 6575, email: defra.library@defra.gsi.gov.uk). Where possible, personal callers should give the library at least 24 hours’ notice of their
requirements. An administrative charge will be made to cover photocopying and postage costs.

19. If you have any queries about this consultation you should contact Philip Walker by e-mail LAWFG@defra.gsi.gov.uk or telephone on 020 7238 4376

20. Complaints relating to this consultation should be sent to Marjorie Addo, Defra’s Consultation Co-ordinator, Area 7/C Nobel House, 17 Smith Square, London SW1P 3JR, or email them to: consultation.coordinator@defra.gsi.gov.uk.
Proposals for Joint Waste Authorities

- Draft Joint Waste Authorities (Proposals) Regulations 2008

- Draft Guidance on Proposals for Joint Waste Authorities in England

21. The draft Joint Waste Authorities Regulations (Proposals) 2008 (annex A) are made under section 205(5) of the Act which provides that the Secretary of State may make Regulations to make provisions as to matters to be included in a proposal (Schedule 1 of the draft Regulations) and information that must accompany a proposal (Schedule 2 of the draft Regulations). Section 3 of the draft guidance provides detail on all the provisions of the draft Regulations and should be read in conjunction with them.

22. The draft guidance on proposals for joint waste authorities (annex B) includes: statutory guidance on what a proposal should seek to achieve and matters authorities must take into account when making a proposal for a joint waste authority; guidance on the provisions of the Act, the draft Regulations and general issues relating to proposals for joint waste authorities. The final package of guidance will also include information on the consequential amendments relating to joint waste authorities, as set out in Schedule 13 of the Act.

23. Views are invited on:
   a. the draft Regulations (annex A)
   b. the draft guidance (annex B)
   c. specific questions, in the body of this paper, on:
      i. what proposals for a joint waste authority should seek to achieve (paragraph 24);
      ii. the key issues of how joint waste authorities will work (paragraphs 30-74); and
      iii. criteria for assessment of proposals (paragraphs 74-76);
   d. any related issues that consultees would like to comment on.

What proposals for a joint waste authority should seek to achieve

24. A proposal for a joint waste authority should seek to modernise and improve waste services through the integration of services across the area such that economies of scale allow efficiencies to be delivered to member authorities and improved services to residents. Local authorities should also consider how the establishment of a JWA can contribute to the wider sustainability/carbon agenda. Proposals should also ensure that a proposed JWA 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.

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

How will Joint Waste Authorities work?

Overview

25. Where two or more local authorities wish to establish a joint waste authority (JWA) to discharge some, or all, of their waste functions to, they may apply to the Secretary of State. 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 JWA.

26. The Secretary of State may make Regulations to make provisions as to matters to be included in a proposal and information that must accompany a proposal. The Secretary of State may also issue guidance as to what a proposal should seek to achieve and matters that should be taken into account in formulating a proposal. Local authorities are obliged to have regard to any such guidance issued by the Secretary of State in making their proposals.

27. Local authorities have to take reasonable steps to consult local residents and other interested parties on any draft proposals for JWAs before submitting them to the Secretary of State. The Secretary of State to implement successful proposals by Order (secondary legislation) with or without modifications (the power to modify does not extend to including areas or functions that are not specified in a proposal).

28. Joint waste authorities can only be dissolved where all the constituent authorities agree to do so or where the Secretary of State considers it is necessary to do so.

29. JWAs will be corporate bodies, governed by elected members from the constituent authorities. The benefits of JWAs are explored in the draft guidance (introduction section).

Waste functions

30. Local waste authorities may choose which ‘waste functions’ will be transferred to a JWA. Proposals will need to specify which ‘waste functions’ each member authority wishes to transfer to the JWA. Section 205(8) sets
out the waste functions which may be transferred from the relevant authorities to a JWA. These are functions conferred on a local authority by or under:

- Part 2 of the Environmental Protection Act 1990 (c.43) (waste on land) – includes waste disposal and/or waste collection functions;
- Part 4 of the Environmental Protection Act 1990 (c.43) (litter etc) – includes street cleansing;
- 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.

31. Section 209 of the Local Government and Public Involvement in Health Act 2007 amends section 24 of the Waste and Emissions Trading (WET) Act 2003 to make joint waste authorities that have the waste disposal function of waste disposal authorities for the purposes of the WET Act 2003. Thus local authorities’ statutory obligations under the Landfill Allowances Trading Scheme (LATS) will automatically transfer to a joint waste authority when the waste disposal function under the EPA 1990 is transferred.

32. Authorities can transfer some or all of these functions to a JWA. However, it should be noted that the entire waste function is transferred to the JWA such that JWAs will be operational bodies. For example, waste collection and disposal functions cannot be transferred to a JWA for only limited activities, e.g. strategic and commissioning role. The JWA will take on all the duties and responsibilities under the waste function/s transferred to it, e.g. for waste collection this would include 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. Authorities wishing to establish joint working arrangements for only limited aspects of waste functions, e.g. strategic activities, should consider alternative partnership models.

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

**Voting arrangements**

33. Each joint waste authority will be governed by a board comprised of elected members from the constituent authorities. It will be for constituent authorities to decide how many members, from each authority, will sit on the Board. Constituent authorities will determine quorum and general voting procedures for a JWA themselves through the development of a constitution for the JWA. However, Waste Strategy 2007 states that ‘it is generally expected that where a JWA takes on collection functions decisions on key issues, such as the introduction of alternate weekly collection schemes, will be subject to unanimity’. Voting on other issues would be determined by simple majority. The draft guidance reflects this position.
34. The position in WS2007 was developed in response to concerns expressed by some about local accountability and the possibility that some constituent authorities would be required to implement decisions on key issues, where they had not supported them. However, recent discussions with stakeholders have highlighted that some consider that voting procedures in a JWA should be determined by the constituent authorities (relying on a unanimous vote is unprecedented within local government and has the consequence of providing any voting member a veto on joint decisions which could be seen to undermine a partnership approach). We would welcome your views on this matter. We are therefore seeking views on the most appropriate framework for voting in JWAs that take on the waste collection function.

35. There are three options:

**Option 1 – National level framework specifying precisely the type of issues requiring/expecting unanimous voting.** Guidance would outline that it is generally expected that voting on key issues, such as introduction of AWC and financial incentive schemes, should be subject to unanimity. Other key issues may be identified, and included in the guidance, at a later date.

**Option 2 – National level framework saying that key issues should be subject to unanimous voting.** Guidance would outline that it is generally expected that voting on key issues should be subject to unanimity, but identification of key issues would be left to constituent authorities to determine, as appropriate.

**Option 3 – Local flexibility to decide on voting arrangements for all issues.** Guidance would outline that it is for constituent authorities to determine voting procedures in a JWA, unanimity voting is available to them for decisions on specific issues if they deem it necessary.

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

**Question 4 - if you prefer option 1 what key issues do you think should be subject to unanimity voting?**

**Staffing of joint waste authorities**

36. When deciding to form a JWA local authorities will need to consider the organisation and staffing of the JWA. It will be for constituent authorities to decide upon the shape, size and organisation of the new JWA, and the location of its staff.

37. A JWA is able to employ its own staff but in the early stages of existence many of the staff in a JWA are likely to have transferred from the constituent
authorities. The guidance sets out the legislative framework for the transfer of staff.

38. Proposals for a JWA must include:

- an estimation of the number of staff likely to be employed by the JWA;
- an indication of the staff that will transfer from constituent authorities;
- an indication of likely recruitment required; and
- an indication of any planned redundancies from each local authority as a consequence of the establishment of the JWA.

39. Pension provision for transferring staff should not be overlooked and, where appropriate, consideration given to the Best Value Authorities Staff Transfers (Pension) Direction 2007.

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

**Transfer of assets and liabilities from constituent authorities**

40. One of the key benefits of a joint waste authority will be its ability to sign contracts on behalf of its constituent authorities. Some authorities will wish to use a JWA to move towards a single integrated contract amongst themselves to maximise efficiencies. However, in the short term it is likely that a JWA will inherit a range of contracts. Such contracts – and the assets, liabilities and property associated with them - relating to any waste functions being transferred to the JWA will also need to be transferred to the JWA. This transfer of contracts is likely to be one of the most complex aspects of the establishment of a joint waste authority.

41. Local authorities will need to check the terms and conditions of each of their relevant contracts to see whether they can be transferred by the constituent authority to the JWA (this will depend on the individual terms and conditions of each contract). Those contracts that cannot be transferred by agreement will need to be transferred using legislative powers which will enable the development of a transfer scheme to transfer assets and liabilities from the constituent authorities to the JWA.

42. While many contracts may need to be transferred it is proposed that a threshold is set regarding the contracts that information needs to be submitted on, as part of a proposal, to avoid authorities having to submit details regarding smaller, more minor contracts. This should allow authorities and Government to identify the larger and more complex contracts at an early stage (where proposals are successful information on all contracts needing to be transferred will eventually be required). It is proposed that a threshold of
£139,893 per annum, based on that in the Public (Contracts) Regulations 2006, is used.

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

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

**Private Finance Initiatives**

43. Private Finance Initiative (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 takes place is to another local authority with sufficient financial standing or resources, or another public body whose obligations are guaranteed by the local authority. This would normally only be feasible where the whole of the contract is being transferred.

44. Proposals for joint waste authorities will need to include specific details of any PFI contracts that are to be transferred together with details of any private finance initiative credits, in relation to any PFI contract being transferred, awarded to any of the local authorities making the proposal. This should include:

- the date of the award of the PFI credits;
- the local authorities that may share the benefit of those PFI credits;
- any conditions contained within any letter awarding PFI credits;
- details of any phasing contained within any letter awarding PFI credits;
- proposed arrangements for the transfer of the PFI credits to the proposed JWA;
- proposed arrangements for the payment of the revenue support grant to the proposed JWA.

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

**Financing of joint waste authorities**

45. Joint waste authorities will not have precepting powers. This is not for consultation here. Revenue support grant will continue to be paid to upper tier and unitary authorities even where a joint waste authority may be

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discharging waste functions of behalf of that authority. However, it is possible that the Waste Infrastructure Capital Grant could be allocated directly to a JWA where it was discharging waste disposal function and where the relevant upper-tier or unitary authority gave its consent for this to happen.

46. A proposal for a JWA must include detail on the funding arrangements for the proposed JWA. Therefore, authorities will need to consider and determine how a proposed JWA will be financed and how costs will be apportioned to the constituent authorities. 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 collections schemes, recycling credits (see paragraphs 55-62 of the draft guidance) 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 JWA) will also need to be factored in. Guidance on this issue will be further developed during the consultation period.

47. Where a joint waste authority is taking on the disposal function from two WDAs or more, then authorities may wish to consider the use of a statutory levy (which would be included in the Order establishing the JWA) whereby the JWA levies funding from 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 JWDA's is a tonnage-based one, i.e. the waste collection authorities payment to the JWDA is based on the tonnage of waste that they deliver to the JWDA.

48. A levy is unlikely to be suitable for JWAs 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 (disposal) or number of households per local area, though other criteria, or a combination, may be suitable for use. This approach has been successfully used by the Shropshire Waste Partnership and the Somerset Waste Board.

49. It is anticipated that joint waste authorities will have the same prudential borrowing powers as normal local authorities. They will be able to borrow capital funding provided that they can demonstrate that they can service the debt.

**Question 9 - what other issues would you like to see addressed in the financing section of the guidance (paragraphs 55-62 of the draft guidance)?**

If you have time, we would welcome any further thoughts you may have on financing arrangements in joint waste authorities.
Landfill obligations

50. Under the Landfill Allowances Trading Scheme (LATS) 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.

51. Where it is proposed to transfer waste disposal functions to a joint waste authority the LATS allowances of the constituent authorities will be transferred to that JWA by virtue of section 209 of the Act. Where two or more waste disposal authorities propose to discharge their waste disposal functions to a JWA their LATS allowances will be pooled in the JWA.

52. The JWA will therefore be liable for any financial penalties or fines as a result of non-compliance with LATS. Constituent authorities of such a JWA will therefore 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. Waste collection authorities entering into a JWA combining disposal and collection functions may wish to ensure that such liability remains with the County Council. Contractual agreements between the constituent authorities could be used to set out the detail of liabilities in the event of financial penalties and/or fines.

53. The draft guidance (paragraphs 75-76) includes a useful example of how the Somerset Waste Partnership have dealt with LATS obligations in their s.101 Joint Committee (the Somerset Waste Board).

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

Waste reporting

54. 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 JWA will be on one set of data for the whole area, which in the long term could delivery efficiencies.

Waste disposal functions

55. Where a local authority transfers its waste disposal functions to a JWA the JWA 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.

8 Comprised of Mendip District Council, Sedgemoor District Council, South Somerset District Council, Taunton Deane District Council, West Somerset District Council and Somerset County Council.
56. Where two or more waste disposal authorities decide to discharge their waste disposal functions to a JWA then changes will also need to be made to the LATS Register.

57. From 1 April 2008 waste disposal authorities will be required to submit annual reports on national indicators NI 191\textsuperscript{9}, NI 192\textsuperscript{10}, and NI 193\textsuperscript{11}. Where it has waste disposal functions a JWA will be responsible for this reporting requirement.

Waste collection functions

58. As from 1 April 2008 waste collection authorities will be required to submit annual reports on national indicators NI 191, NI 192, NI 193 and NI 196\textsuperscript{12}. Where two or more waste collection authorities are transferring their waste collection functions to a JWA the JWA will take on responsibility for this reporting requirement. A JWA may wish to realise efficiencies by employing integrated collection contracts which disregard district/Borough boundaries. In these circumstances a JWA would be able to submit an annual report on the relevant national indicators for the collective area, rather than individual Boroughs. Again, changes to Waste Data Flow database will be need to be made. More thought will need to be given to a JWA which operates across County or unitary boundaries.

Street cleansing functions

59. As from 1 April 2008 local authorities (single tier or districts/Boroughs) will be required to submit annual reports on the national indicator NI 195\textsuperscript{13}.

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

Overview & scrutiny in joint waste authorities

60. Under section 21 of the Local Government Act 2000 the overview and scrutiny committee of a local authority has broad powers to make reports to their executive/authority on matters which affect their area. Thus under current legislation each constituent authority would retain the power to review and scrutinise the work of a joint waste authority in relation to their area.

\textsuperscript{9} NI 191 - Kg/household of residual household waste
\textsuperscript{10} NI 192 - Percentage of household waste recycled and composted
\textsuperscript{11} NI 193 - Percentage of total municipal waste landfilled
\textsuperscript{12} NI 196 - Improved street and environmental cleanliness – fly tipping
\textsuperscript{13} NI 195 - Improved street and environmental cleanliness (levels of graffiti, litter, detritus and fly posting)
61. However, following changes to legislation, brought in by part 5 of the Act, overview and scrutiny Committees will have new statutory powers. Under these powers such Committees will be able to request information from and send report to ‘partner authorities’. In turn partner authorities will have to ‘have regard to’ such reports. Joint waste authorities are partner authorities for the purpose of section 104 of the Act.

62. Section 123 of the Act also 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, or may not, provide to such a joint committee. Where authorities established a joint waste authority for collection and disposal functions in a two-tier area they would have the opportunity to establish a joint overview and scrutiny committee if they wished. CLG will shortly be consulting on this package of Regulations and guidance.

Code of conduct for members

63. It is proposed that the Board of each joint waste authority will be made up of members from the constituent local authorities. Such members will be subject to the ethical regime for local councillors, including the model code of conduct setting out standards of behaviour which are expected of members, under Part III of the Local Government Act 2000. A member will continue to be covered by the code of conduct of his or her authority when he or she serves on another body as a representative of the authority, for example, when serving on a JWA. Since members acting as representatives in this way will already be covered by the existing rules, we do not propose to provide for the local government conduct regime to apply directly to JWA members under Part III of the Local Government Act 2000.

64. However, there may be benefits in terms of transparency and accountability for JWAs themselves to take ownership of conduct issues in respect of the members who serve on them. This could be ensured by providing that JWAs are added to the list of relevant bodies under section 49 of the Local Government Act 2000, members of which are subject to the conduct regime for local government. This would allow the same rules to apply in respect of the behaviour of JWA members as apply to members of local authorities and other bodies in the local government world.

Question 12 - do you agree with the proposal to align the ethical regime of joint waste authorities with that of other local authorities and similar bodies as indicated above (paragraph 64)?

Local Performance Framework

65. From 1 April 2008 the local performance framework will change, providing 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 they will then 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.

66. Under the new performance framework authorities and their partners will report annually on a set of 198 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 will be signed in June 2008. They will be reviewed on an annual basis and will be renegotiated every three years.

Local Area Agreements

67. Under the new performance framework local authorities and their partners will report on 198 nationally agreed indicators, three of which are on waste and two on local environmental quality. Each LAA will include up to 35 local improvement 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.

68. 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 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 authorities14.

69. Where the geographical scope of a JWA crosses county boundaries, e.g. a JWA 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 JWA to negotiate sensible targets in such a situation. A multi area agreement (see paragraphs 71-72) on waste might also offer an alternative approach for such situations.

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

14 Information on the consultation on draft statutory guidance can be found at: http://www.communities.gov.uk/publications/localgovernment/statutoryguidance
Multi Area Agreements (MAAs)

71. Multi area agreements are non-statutory agreements between top-tier or unitary authorities and their partners. It is not legally possible to include designated targets in an MAA without including them in the LAA.

72. There are three categories of target which could feature in an MAA:

- targets drawn from the National Indicator Set which the MAA partnership and Government have agreed through negotiation should be designated, and which will therefore feature in the constituent LAAs as well as in the MAA. As they are part of the LAA, these targets would automatically be subject to the statutory duties which apply to LAAs;
- targets drawn from the National Indicator Set which are not designated. These could either be purely voluntary, sub-regional targets as well as in the MAA, the first of which would not be subject to the statutory duties to co-operate and have regard; and
- targets which are not drawn from the National Indicator Set (e.g. population growth). These could also be purely voluntary, sub-regional targets that would only feature in the MAA, or could feature in the constituent LAAs as local targets as well as in the MAA. If they featured in the MAA only, they would therefore not be subject to the statutory duties to co-operate and have regard.

Comprehensive Area Assessments

73. 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 CAA. A further, more detailed consultation on methodology, will take place in summer 2008. It is not yet clear how CAAs will affect JWAs.

Question 13 - in the guidance on proposals for joint waste authorities do you want information on:

a. LAAs, MAAs and the CAA
b. Any combination of the above (please specify)
c. None of the above
d. Other (please specify)

Criteria for the assessment of proposals for joint waste authorities

15 Available at: http://www.audit-commission.gov.uk/CAA/index.asp
74. The assessment of proposals for a joint waste authority will primarily be based on whether they meet the requirements of the Regulations and the statutory guidance.

75. 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 JWAs in two-tier areas will need to justify why involvement of their waste disposal authority in the establishment of the JWA is not appropriate and demonstrate what engagement there has been with the waste disposal authority on the development of the proposals. We propose to include provisions to this effect in either the final Regulations and/or the statutory guidance.

**Question 14 - do you agree that provisions to this effect are included in the final Regulations or statutory guidance?**

76. 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. We therefore propose to include a provision in the final Regulations and/or the guidance that proposals to the Secretary of State should be accompanied by a letter of endorsement by the leaders of all the authorities that are party to a proposal.

**Question 15 - do you agree that proposals for JWAs should be accompanied by a letter from the leader of the Councils party to the proposal?**

**Summary of questions**

77. A summary of the questions outlined in this paper is provided below:

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

**Question 2:** are there statutory duties and responsibilities associated with the waste functions above (paragraphs 26-28) which you think need to be expanded on, or included, in the guidance?

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

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

**Question 5:** do you agree with the information that must be included in a proposal? Is anything missing?
Question 6: do you have non-complex contracts above this threshold or only exceed the threshold due to cumulation, e.g. framework contracts?

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

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

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

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

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

Question 12: do you agree with the proposal to align the ethical regime of joint waste authorities with that of other local authorities and similar bodies as indicated above (paragraph 64)?

Question 13: in the guidance on proposals for joint waste authorities do you want information on:
   e. LAAs, MAAs and the CAA
   f. Any combination of the above (please specify)
   g. None of the above
   h. Other (please specify)

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

Question 15: do you agree that provisions to this effect are included in the final Regulations or statutory guidance?
The Secretary of State makes the following Regulations in exercise of the powers conferred by section 205(5) and (6) and section 240(10) of the Local Government and Public Involvement in Health Act 2007(a).

Title, application, commencement and interpretation
1.—(1) These Regulations—
(a) may be cited as the Joint Waste Authorities (Proposals) Regulations 2008;
(b) apply in England; and
(c) come into force on [     ] 2008.
(2) In these Regulations, “the Act” means the Local Government and Public Involvement in Health Act 2007.

Proposal for a joint waste authority
2. A proposal under section 205 of the Act must—
(a) include proposals as to the matters set out in Schedule 1; and
(b) be accompanied by the information set out in Schedule 2.
SCHEDULE 1

Matters to be included in a proposal

Name of the joint waste authority

1. The name of the proposed joint waste authority.

Date of establishment

2. The date of establishment of the proposed joint waste authority.

Specified area

3. The area of the proposed joint waste authority.

Waste functions

4. The waste functions to be transferred to the proposed joint waste authority by each local authority making the proposal.

Members

5. The total number of members of the proposed joint waste authority.
6. The number of members to be appointed by each local authority making the proposal.
7. The date by which first appointments of members are to be made and details of to whom these appointments must be notified.

First meeting

8. The date that the first meeting of the proposed joint waste authority will be held.

Voting

9. The voting procedures for decisions taken by the members of proposed joint waste authority.

Staffing of the proposed joint waste authority

10. The staffing arrangements for the proposed joint waste authority, including—
    (a) the estimated number of staff;
    (b) the transfer of staff from each local authority making the proposal to the proposed joint waste authority, including—
        (i) the job descriptions of such staff; and
        (ii) the terms and conditions of employment of such staff;
    (c) the requirements for the recruitment of staff; and
    (d) any planned redundancies from each local authority making the proposal as a consequence of the establishment of the proposed joint waste authority, including the number of proposed redundancies.

Costs

11. Proposals for the costs of any proposed joint waste authority to be met by the local authorities making the proposal.
12. The basis on which the amount payable by each of those local authorities towards the costs of the proposed joint waste authority is to be determined.

First year funding

13. The anticipated level of funding required for the first year of operation of the proposed joint waste authority.

14. The arrangements between the local authorities making the proposal for the provision of such funding.

Transfer of assets and liabilities

15. The transfer of any assets or liabilities to the proposed joint waste authority and the procedure for, and date of, such transfer.

SCHEDULE 2

Information to accompany a proposal

Local authorities

1. For each of the local authorities making the proposal, details of—
   (a) each authority’s area; and
   (b) the waste functions conferred on each authority.

Consultation

2. A summary of the consultation undertaken on the draft proposal under section 206 of the Act, including—
   (a) the steps taken by each local authority making the proposal to consult the relevant electors and any interested person in its area;
   (b) the issues raised in the responses to the consultation; and
   (c) details of how those issues have been addressed.

Other joint working arrangements

3. Details of any joint working arrangement that each local authority making the proposal has entered into for the purposes of waste management, including—
   (a) a description of the nature of that arrangement;
   (b) the activity undertaken through that arrangement; and
   (c) the duration of that arrangement.

Contracts

4.—(1) Details of contracts for the collection, recycling, treatment or disposal of waste to which each local authority making the proposal is, or expects to be, a party including—
   (a) the parties to the contract;
   (b) the date of the termination of the contract; and
   (c) the arrangements in place for that contract when the proposed joint waste authority is established.

   (2) This paragraph does not apply to contracts with a value of less than £139,893.
Landfill obligations

5.—(1) If the proposed joint waste authority has the function of disposing of biodegradable municipal waste—
   (a) the arrangements to ensure the fulfilment of its duties as a waste disposal authority for the purposes of the Waste and Emissions Trading Act 2003(a); and
   (b) the arrangements for the payment of any penalty incurred by it under section 9 of that Act.
   (2) In this paragraph, “biodegradable municipal waste” has the meaning given by section 21 of that Act.

Private finance initiative credits

6. Details of any private finance initiative credits (“PFI credits”) relating to waste management that have been awarded to each of the local authorities making the proposal, including—
   (a) the date the PFI credits were awarded;
   (b) the local authorities that may share the benefit of the PFI credits;
   (c) any conditions attached to the award of the PFI credits;
   (d) 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.

7. Details of any proposed arrangements for—
   (a) the transfer of the PFI credits to the proposed joint waste authority; and
   (b) the payment of the revenue support grant to the proposed joint waste authority.

Agreement concerning the payment of penalties

8. A copy of the draft agreement between the local authorities making the proposal concerning the arrangements for the payment of any penalty incurred by the proposed joint waste authority under section 9 of the Waste and Emissions Trading Act 2003, or confirmation that such an agreement is being prepared.

9. Details of the timetable for finalising the agreement.

Costs savings

10. Details of any anticipated costs savings as a consequence of the establishment of the proposed joint waste authority.

Environmental benefits

11. Details of any anticipated benefits to the environment as a consequence of the establishment of the proposed joint waste authority.

Waste management services

12.—(1) Details of the strategy for the maintenance or improvement of the current standard of waste management services for controlled waste in the specified area of the proposed joint waste authority.
   (2) In this paragraph “controlled waste” has the meaning given by section 75 of the Environmental Protection Act 1990(b).

(a) 2003 c. 33.
(b) 1990 c. 43.
Communications strategy

13. Details of the strategy for communicating the establishment of the proposed joint waste authority to—
   (a) local residents;
   (b) local businesses; and
   (c) in the case of the establishment of a joint waste authority in any non-metropolitan county, any local waste authority in the county that is not party to the proposal.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations set out the matters that local authorities must include in a proposal for the establishment of a joint waste authority under section 205 of the Local Government and Public Involvement in Health Act 2007 (c. 28) (regulation 2(a) and Schedule 1). Regulation 2(b) and Schedule 2 set out the information that must accompany such a proposal.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.