

## **Waste Collection**

### **Purpose of Report**

The purpose of this report is to provide information to members of the Board on the current regulatory, policy and initiative landscape that will be affecting councils' waste collection services.

### **Summary**

The report sets out three related issues on waste collection. Firstly the key issues and challenges arising from the consultation on amending the Waste Regulations 2011 that concern the separate collection of recycling.

Secondly, the report provides an overview of the LGA response to the consultation on amending the powers of local authorities regarding presentation of waste for collection.

Finally, the report provides an update for members on the support the LGA is providing for councils seeking to make use of the £250 Million Weekly Collection Support Scheme.

### **Recommendations**

1. That Members comment on the impact of the new Recycling Regulations on councils and provide a steer on influencing the development of the supporting guidance.
2. That Members indicate if there are additional issues that should be considered as part of a 'Technological, Economical and Environmental Practicability' (TEEP) test' and the establishment of recycle quality standards.
3. That Members note the response to the consultation on amending the powers of local authorities regarding presentation of waste for collection.
4. That Members note the support the LGA is developing to assist councils seeking to apply for the £250 Million Weekly Collection Support Scheme.

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**Actions**

1. Officers will use the steer to focus their lobbying on the new regulations and guidance.
2. Officers will use any steer on powers and penalties in determining next steps.
3. Officers will shape the developing LGA support offer on the £250 Million Weekly Collection Support Scheme based on members' comments.

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## **Councils' Waste Collection Services**

### **Background**

1. Proposals have been put forward to revise regulations that will affect councils' decision making process on how they collect recycling, and the powers and penalties available to them to ensure waste is presented in a way that supports their collection service. In addition, the Department of Communities and Local Government (DCLG) has launched its £250 Million Weekly Collection Support Scheme to promote its position that residual waste should be collected weekly.
2. The LGA has the opportunity to formally respond to the consultations on amending the Waste Regulations 2011 and on amending the powers of local authorities regarding presentation of waste for collection. In both responses we will seek to retain the ability of councils to make local decisions on how their waste collection service is provided and protected.
3. We have also been developing support for councils seeking to take advantage of the £250 Million Weekly Collection Support Scheme.

### **New Recycling Collection Regulations**

4. The Department of the Environment, Food and Rural Affairs (DEFRA) has launched a consultation seeking views on amendments to 'The Waste (England and Wales) Regulations 2011'. The Regulations, which transpose the revised Waste Framework Directive 2008/98/EC, have been subject to Judicial Review. The regulations concern the requirements on local authorities for the collection of recycled materials from 2015. The consultation explains the basis for an amended version of Regulation 13 on which views are sought by **Thursday 12 April 2012**.
5. DEFRA and Welsh Government were subject to Judicial Review during summer 2011 based on a challenge that the regulations failed to correctly transpose the revised EU Waste Framework Directive. The basis of the Claimants case is that EU law requires the various kinds of waste that are commonly recycled to be separately collected or sorted at the kerbside during collection. The existing UK regulations explicitly specify that co-mingled collection is a form of separate collection.
6. The LGA, at DEFRA's invitation, has been an Interested Party in this case and appointed independent legal advisers and Counsel. The LGA objective as an Interested Party was to support DEFRA's position and represent the interests of local government to ensure that councils continue to have the ability to determine

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locally the most appropriate collection methods for their local circumstances - rather than have this predetermined centrally.

7. The LGA and the other interested parties supported DEFRA in seeking and being awarded an adjournment in the case for six months in order to amend the regulations.
8. The key changes to the existing version within the new regulations are:
  - 8.1. **That the requirement to collect waste paper, metal, plastic and glass by way of separate collection by 2015 will be consistently applied to Waste Collection Authorities that retain in-house collection services, those that outsource the service, and the contractor.** This means that the Waste Collection Authority cannot make the contractor solely responsible for determining the local waste collection methodology.
  - 8.2. **The removal of the explicit reference in the regulations that co-mingled collection could be considered as a form of separate collection.**
  - 8.3. **The requirement to collect by way of separate collection will not be required if it is not technically, economically or environmentally practicable (TEEP) or necessary to meet quality standards.**
  - 8.4. **A change from 'appropriate to meet necessary quality standards' to 'necessary to meet the appropriate quality standards'.** This reflects the fact that the specific obligation to collect the four materials by 2015 is subject to Article 10(2) of the Directive in the first instance, which refers to what is necessary to comply.
9. The consultation document states that **production of statutory guidance will follow the laying of the amended regulations.** This will be of paramount importance for determining what is meant by 'technologically, economically or environmentally practicable – being referred to as 'TEEP' - and what is meant by 'appropriate quality standards'. In the consultation, DEFRA states their intention to provide this guidance following on from the publication of the European Commission's guidance and the satisfactory resolution of the Judicial Review. This will be accompanied by an impact assessment, or assessments, as necessary.
10. Officers have been petitioning DEFRA to introduce this guidance as soon as possible after the laying of the new regulations. DEFRA has assured the LGA that this is their intention and that they are planning to work with the LGA and its members to develop guidance that works for councils.

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11. We believe the key issues are around the process for determining whether 'separate collection' is technically, economically and environmentally practicable (TEEP) and what the appropriate quality standards are.
12. The consultation provides additional information on TEEP and quality standards, identifying the following as needing consideration:
  - 12.1. The collection of non-bottle plastics;
  - 12.2. Demography, housing stock, road-width and urban density;
  - 12.3. Current contractual arrangements.
13. There is acknowledgement by DEFRA that these issues will need further consideration. **Please could members of the Board indicate if there are additional issues that should be considered as part of a 'Technological, Economical and Environmental Practicability Test' (TEEP) and the establishment of recycle quality standards.**
14. Officers have also been lobbying DEFRA to make the regulations robust enough to prevent any legal challenges being levelled at councils. We understand that members of the board are concerned that the current ambiguity of TEEP and quality standards could leave councils open to challenge should they determine that separate collection is not practicable or necessary.
15. We propose to continue lobbying DEFRA to make it clear in the guidance that it is the Waste Collection Authority that determines what is practicable and necessary, and not external organisations that are not familiar with the local circumstances. **Officers would welcome any additional steer on the lobbying priorities for our response to the consultation on the regulations and the forthcoming guidance.**

**Consultation on changes to the powers and penalties available to councils in the presentation of waste for collection.**

16. Lord Taylor of DEFRA wrote to council Chief Executives on 16 January 2012 to proposing interim changes to powers and penalties outlined in section 46 of the Environmental Protection Act 1990 under which councils specify how householders present their waste for collection.
17. At present councils have the option of issuing a fixed penalty notice at a level between £75 - £110 with an ultimate criminal sanction and fine of up to £1000. DEFRA is proposing to reduce the levels of fixed penalties to £60 - £80, with a default level (if not stated by the local authority) of £60 and £40 as a minimum for early payment.

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18. "Harm to local amenity" will also be introduced as a test before such a penalty can be imposed. DEFRA has stated that the purpose of the test is to ensure that penalties are targeted at those who behave in a way which reduces the quality of their neighbours' surroundings.
19. We have responded to Lord Taylor's letter (24 February) and the full consultation (9 March). The key elements of our response to the full consultation have centred on:
  - 19.1. The expectation residents have that councils can effectively deal with their neighbours who knowingly present waste without regard for the collection schedule or procedures, and undermine their recycling efforts.
  - 19.2. Our assertion that the reference to the use of the criminal sanction has been over-stated.
  - 19.3. How these changes fit into the bigger picture discussion about improving the quality of recycling under the EU Waste Framework Directive and the new Recycling Regulations.
  - 19.4. That the 'harm to local amenity' test should be determined at a local level.
20. Officers will outline the full LGA response (finalised after the deadline for this paper) for members at the Board meeting. **Members of the Board are asked to note the response.**

**£250 Million Weekly Collection Support Scheme**

21. The Department for Communities and Local Government (DCLG) recently launched the prospectus to its £250 million Weekly Collection Support Scheme. The scheme is available for local authorities to 'increase the frequency and quality of waste collections and make it easier to recycle'.
22. Bids are invited that include the following, listed in order of assessment weighting:
  - 22.1. a weekly residual collection alongside a weekly recyclables collection;
  - 22.2. a weekly residual collection with fortnightly recyclables collection adding a weekly food waste (or organic) collection to a fortnightly;
  - 22.3. collection of residual household waste.

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23. The bidding process will first involve a non binding expression of interest (to be received by 16 March), followed by an outline bid (by 11 May) and final bid (by 17 August). Successful bidders will be announced in Autumn 2012.
24. Taking forward the direction from the Board at the last meeting to support councils in applying for the £250 Million Weekly Collection Support Scheme, officers have worked across the LGA and with partner organisations to produce a short supporting guide, now available on the LGA website, set out in **Appendix 3a**.
25. Given the tight timescales for the submission of bids and the delivery of projects, particularly in this financial year, the LGA is investigating the scope for providing two workshops to assist councils further in applying for the fund. Officers will provide further information on this work.
26. **Members of the Board are asked to note the guidance document.**