

25 June 2012

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## **Waste issues – Red tape challenge and fly-tipping on private land**

### **Purpose of Report**

To obtain a steer from the Environment and Housing Board on the LGA position in relation to the waste issues within the Red Tape Challenge; and the upcoming Flytipping Summit and the subject of fly-tipping on private land.

### **Summary**

The government has been considering a number of changes to waste related regulations that have been brought about by the Red Tape Challenge (RTC) and the Farming Regulation Task Force.

The RTC proposals include reform to the Waste Transfer Note system which provides the evidence base for the transport of waste as a key means of enforcement of fly-tipping by local authorities. The proposals also cover the producer responsibility obligations concerning Waste Electrical & Electronic Equipment (WEEE), Battery Compliance Schemes and Packaging Waste Regulations, which could in some cases lead to a reduction in responsibility by businesses to reduce and recycle the materials they put on the market.

A Fly-tipping Summit will be hosted by DEFRA in July which will focus on the issue of fly-tipping on private land. This follows the recent Farming Regulation Task Force report to reduce into the burden on farmers. It recommends that farmers are provided with free disposal of fly-tipped materials at local authority household waste and recycling centres.

### **Recommendations**

1. That the Board agree with the proposed engagement with DEFRA on the revision of requirements on Waste Transfer Notes documentation and on the approach to the revision of Packaging Waste Regulations.
2. That the Board agree with the proposed engagement with the Department of Business, Innovation and Skills on WEEE revision and transposition and Battery Compliance.
3. That the Board discuss the issue of fly-tipping on private land and agree a LGA position in advance of the DEFRA Flytipping Summit.

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4. That the Board agrees which Board member should attend the Flytipping Summit.

**Action**

As directed by members

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## **1. Red tape challenge – waste related issues**

### **Background**

1. The Red Tape Challenge (RTC) was set up by the government via a website. The website lists the relevant regulations and seeks the views of the public and businesses to make suggestions about whether they could be changed or removed.
2. Once each theme closes for comment, suggestions are forwarded to the Department responsible and are reviewed by the Minister in order to determine proposals for regulatory reform – which then go forward to a Reducing Regulation Committee for clearance.
3. The Environment theme – which included regulations on waste - sought comment on 40 regulations. It remains open, but has reported on a number of areas with relevance to local authorities and waste as follows:
  - 3.1. Waste transfer notes and fly-tipping.
  - 3.2. Producer responsibility obligations.

### **Waste transfer notes and fly-tipping**

4. Waste transfer notes (WTN) are required to be completed by anyone that handles waste as part of the Duty of Care regime, which details the nature of the material and its transfer between individuals or businesses.
5. The RTC proposal is to remove the requirement for businesses to produce WTNs in order to alleviate the associated administrative burdens and replace it with other forms of evidence (such as invoices or contracts). This would reduce burdens on businesses by allowing them to maintain evidence in whatever format is convenient to them as long as it meets a minimum level of evidence requirement.
6. DEFRA are currently in the process of deciding whether to go further than the requirements of the RTC and conduct a full review of the information that is required to satisfy the Duty of Care. This may include, for example, changes to the requirement to provide a code (from the European Waste Code) for each type of waste, which can be confusing and time consuming for businesses.
7. WTNs provide a key source of evidence that councils and other authorities can demand in spot checks of vehicles that are suspected of being involved in fly-

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tipping. Without this evidence it could be much more difficult for councils to successfully prosecute fly-tippers or potential fly-tippers.

8. Any changes to the current system would therefore need to ensure the robustness of evidence. This should avoid undermining the system of requirement on request for proof that appropriate arrangements are being made for the transfer of waste material.
9. Furthermore, the recent statements by Her Majesty's Revenue and Customs (HMRC) on the application of landfill tax for certain materials (**see Item 5d for a summary**) may require more stringent recording of evidence on different types of material and its source, in order to take advantage of lower levels of landfill tax. It would be important that any changes do not unduly affect the ability of local authorities and their waste contractors to account for particular types of waste and avoid liability for additional landfill tax.
10. DEFRA will consult on their changes to the Duty of Care regime and WTNs at the end of 2012 / start of 2013.
- 11. We propose to engage constructively with DEFRA on this process in seeking to minimise the burdens on business where it can be shown to have no adverse impact on either the likelihood of successful enforcement action by local authorities, or the level of bureaucracy necessary to bring this about.**

**Producer responsibility obligations**

12. The RTC has made recommendations on producer responsibility obligations in relation to three areas:
  - 12.1. Waste Electrical & Electronic Equipment
  - 12.2. Battery Compliance Scheme
  - 12.3. Packaging Waste Regulations
13. **Waste Electrical & Electronic Equipment (WEEE)** includes anything from fridges to televisions to mobile phones. The RTC identified a view from producers that the current compliance system can result in excessive costs that do not reflect the true costs associated with the collection and recycling of WEEE deposited at household waste and recycling centres (HWRCs).
14. At present local authorities can register their HWRCs as designated collection facilities for WEEE and must have in place an agreement with a Producer Compliance Scheme (PCS). Local authorities are not permitted to receive a fee

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for contracting with a PCS, although negotiation may include the PCS committing to host a member of staff and carry out communications on behalf of the local authority. Some local authorities have negotiated an income based on the particular types of WEEE they offer to their PCS. However, across the local government sector the picture on achieving value from WEEE varies and can depend on the total volume a council is able to bring forward.

15. The Department of Business Innovation and Skills (BIS), the lead department on WEEE, will consult at the end of 2012 / start of 2013 on options for regulatory change to meet the RTC. At the same time BIS will consult on the transposition of the recast of the EU WEEE Directive (which contains increased targets for producers for recycling of WEEE). In advance of the consultation BIS have issued a request for evidence and also are seeking interim changes to reduce the costs for producers.
16. **We propose to engage with BIS in relation to their request for evidence, where appropriate, and on the interim and longer term changes to ensure that local authorities are better able to receive an income for their collection of WEEE. Any changes should not affect the current contractual arrangements that councils have entered into.**
17. The **Battery Compliance Scheme** will be consulted on by BIS in late 2012 / beginning of 2013 and will look at options to revise the threshold for inclusion of battery producers and reduce reporting burdens. It may also include an increase to the de-minimis level that distributors have to take back waste batteries.
18. DEFRA are responsible for the **Packaging Waste Regulations** for which there is an RTC proposal to reduce the burden on small and medium enterprises. This could see change and increase in the threshold at which packaging producers must comply. This could exempt some smaller businesses from the targets for recycling of material streams (which was increased in the November Budget).
19. These changes will be consulted on in late 2012 / beginning of 2013. At the same time DEFRA will consult on reform to the regulations and the working of the packaging compliance schemes that operate via the packaging recovery note (PRN) system. At present the compliance schemes (e.g. Valpak) retain much of the value of PRN evidence and of the materials that local authorities pass on for reprocessing.
20. This review presents the opportunity for the LGA to pursue its long sought revision to this system to achieve greater transparency within the packaging compliance schemes. Revision should also include much greater recognition of local authorities as crucial players in the material supply stream, and by

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association additional financial reward for the material that they collect, sort and offer for reprocessing.

21. **We propose to continue to engage constructively with DEFRA on reform of the Packaging Waste Regulations and the associated compliance schemes in seeking a better deal for local authorities.**
22. If the outcome of the RTC proposals is the scaling back of the responsibility by businesses on reduction and recycling of packaging and batteries they produce and distribute, then there could be additional costs for local authorities and their waste contractors. **We propose to carry out further and detailed examination of these proposals and their impact on local authorities in order to lobby appropriately in advance and within the associated consultations.**
23. For a summary of all the waste related consultations over coming months see **Item 5d**

## **2. Flytipping Summit - private land issue**

### **Background**

24. DEFRA have invited the LGA and other stakeholders to take part in a Flytipping Summit to be chaired by Lord Taylor on 26 July. The Summit will look at the issue of fly-tipping broadly, but its predominant focus will be on agreeing a response to the Farming Regulation Task Force. The Task Force is chaired by Richard Macdonald (former Director General of the National Farmers Union) and has focussed on ways to reduce burdens on farmers and food processors by reviewing regulations and their implementation.
25. The Task Force has recommended that material that is fly-tipped on farms is reclassified by the Environment Agency as household waste and that farmers can dispose of it at council household waste and recycling centres for free.

### **Flytipping on private land**

26. The available data on fly-tipping on private land is limited as many land owners do not report incidents. DEFRA carried out a trial in two regions (the North West and West Midlands) between April 2009 and March 2012 which reported 3,228 incidents. It is not clear what number of these incidents happened on farming land. According to DEFRA landowner estimates suggest that clearance and disposal of fly-tipping from private land may cost £50-100m a year nationally.

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27. Currently the practice across the country varies widely in terms of the service offered to land owners by local authorities. In most cases local authorities ask for incidents to be reported and will investigate, however approaches to clearance and disposal vary. In most cases local authorities target resources on public land due to cost pressures and do not offer a free clearance and disposal service to private land owners.
28. In its response to the Task Force the government recognised the potential cost of free collection and disposal of this material. For the government the Summit will aim to identify and champion affordable solutions and find a holistic approach that is based on communication between affected parties, local authorities and the police.
29. We understand that DEFRA intend to produce a Framework of good practice with supporting guidance for local partnership working to combat fly-tipping on private land. The Framework will be non-prescriptive in tone and encourage co-operation and demonstrated through case studies and good practice.
30. Through ongoing engagement with DEFRA officials the LGA has ensured that there is acceptance that a duty on local authorities to clear fly-tipped material on private land would not be appropriate or affordable unless fully funded. However DEFRA would like the LGA to consider whether it could encourage local authorities to accept fly-tipped material without charge that was cleared by the landowner and transported to household waste and recycling centres.

**Considerations**

31. In determining whether the LGA could support free disposal of this material there are a number of considerations for members to take into account, namely:
  - 31.1. Whether the LGA could support this in principle in the absence of detailed data on the additional exposure by local authorities to increased disposal costs;
  - 31.2. How a process of free disposal could be established that is both robust in ensuring avoidance of abuse, and without additional bureaucratic burdens for local authorities;
  - 31.3. How consistent an agreement to encourage local authorities to take this material from farmers would be in relation to other private land owners;
  - 31.4. Whether the LGA would seek to take a position nationally on an issue that is currently decided on the basis of local circumstances and priorities.

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32. There may also be the potential to offer a compromise that includes LGA encouragement for:
  - 32.1. the application of a limited charge at the household waste and recycling centre for this material (as some councils have already established, although it should be noted, against the wishes of DCLG);
  - 32.2. the free disposal of fly-tipped material on a single occasion on the basis that the land owner secures their land perimeters in order to avoid further incidents. On repeat occasions the local authority may apply a charge;
  - 32.3. a more consistent and prominent offer for reporting and investigation of fly-tipping on private land as well as the provision of advice on local clearance and disposal contractors.
- 33. The Board is asked to comment on how the LGA should position itself in relation to this issue in advance of the Flytipping Summit.**
- 34. Members are also asked to agree which Board member should attend the Flytipping Summit.**