

MUNICIPAL YEAR 2011/2012 REPORT NO. **162**

MEETING TITLE AND DATE:

Cabinet 14th December 2011
Council 25th January 2012

JOINT REPORT OF:

Director - Environment and
Director of Finance,
Resources and Customer
Services

Agenda – Part: 1

Item: 12

**Subject: North London Waste Authority
Levy Change and Household Waste and
Recycling Centre Transfer**

KD No: 3414

Wards: All

**Cabinet Members Consulted: Cllr Bond &
Cllr Stafford**

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1. EXECUTIVE SUMMARY

- 1.1 This report sets out the background to the North London Waste Authority (NLWA), the current statutory default levy arrangements and the proposed changes pending repeal of the Refuse Disposal (Amenity) Act 1978.
- 1.2 The report then explains the rationale for the recommendations going forward to:
 - 1.2.1 Vary the NLWA levy from 2012/13 by amending the Joint Waste Disposal (Levies) (England) Regulations 2006 (SI no 248)unanimously by Enfield and the six other constituent boroughs with regards to the costs for the Household Waste and Recycling Centres only.
 - 1.2.2 Agree to transfer the Household Waste and Recycling Centre to the NLWA, on appropriate Lease terms following the repeal of the Refuse Disposal (Amenity) Act 1978 from April 2012.

2. RECOMMENDATIONS

- 2.1 Members are recommended to approve the following resolution set out below, in order to vary the NLWA levy in respect of Household Waste and Recycling Centres only from the 2012/13 financial year.

“The London Borough of Enfield agrees that the revisions to the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 as set out at Appendix 1 should apply to the apportionment of the North London Waste Authority levy with effect from 1st April 2012 until such time as a further resolution is agreed unanimously by this Council and the six other constituent councils of the North London Waste Authority and such further resolution becomes effective, or further statutory provisions take effect and supersede the Appendix.”

- 2.2 Members are recommended to agree to transfer a leasehold interest in the Household Waste and Recycling Centre at Barrowell Green to the NLWA on 1st April 2012 following the repeal of the Refuse Disposal (Amenity) Act 1978 from April 2012. This would be subject to securing assurances from the NLWA as set out in paragraph 3.20 delegated to the Director Environment and Cabinet Member for Environment.

3. BACKGROUND

- 3.1 The NLWA is a Statutory Joint Waste Disposal Authority (JWDA) for 7 North London boroughs. The NLWA area jointly disposes of almost one million tonnes of rubbish every year, making it the second largest waste disposal authority area in the country. The current waste disposal contract, awarded in 1994, expires in December 2014. The NLWA in partnership with the 7 Waste Collection Authorities (WCAs) is now in the process of procuring a replacement contract. The WCAs will not be a party to this contract but the terms of this contract will impact on the WCAs through their relationship with NLWA.
- 3.2 The replacement contract between NLWA and its contractor, yet to be appointed, will be to design, build and operate the new waste facilities

across North London which will require significant investment. Therefore due to the level of investment required the new contract is for up to 30 years. This duration of contract is normal for waste infrastructure projects and helps to smooth the capital repayment costs. The new proposed contract will replace the current facilities including the energy from waste facility with more sustainable waste solutions which will be brought forward by bidders through the invitation to submit detailed solutions and which will be designed to increase recycling, and mitigate the increasing cost of waste disposal due to landfill tax increases.

- 3.3 The replacement contract currently includes Household Waste and Recycling Centres (HWRCs), however there is the option not to award this element if it does not offer value for money and therefore not enter in to the lease.
- 3.4 To date, to progress the replacement waste disposal contract, the following has been approved by Cabinet:
- The formal adoption of the North London Joint Waste Strategy and retrospective environmental impact assessment
 - Enfield's Affordability envelope – a signed letter accepting and acknowledging each borough's share of the NLWA's future waste treatment costs based on a reference project and the associated waste collection costs.
 - The signed Memorandum of Understanding - a high level document that reflects many of the principles in the proposed IAA and which served to agree the Councils' (WCAs') intention to work with the NLWA and other six boroughs.
 - The Statement of Principles - that contained more specific principles to be included in a future IAA.
 - The Inter Authority Agreement (IAA) – the document will govern the interface between the NLWA and its seven WCAs with regards waste management over the life of the NLWA's proposed future waste management contracts. These contracts are currently in the process of being procured and are expected to last for 30 years.
- 3.5 Through the approval of the IAA the Council has agreed to decisions surrounding the following areas:
1. The responsibilities of each of the parties,
 2. How any changes will be managed,

3. How the costs of the services will be apportioned between the boroughs,
4. The requirement for the WCAs to meet a 50% recycling target
5. The tonnages each WCA is guaranteeing to deliver by waste stream, and
6. The transfer of HWRCs and the development of the HWRC network.

3.6. Of relevance in this report are points 3 and 6 above.

Current Levy / Charging Mechanism

3.7 The costs in relation to HWRCs can be split into three areas:

- a) Operational and maintenance costs
- b) Transport and disposal of residual waste
- c) Purchase of land for further / new sites

3.8 All HWRCs are currently operated by WCAs in line with their obligations under Section 1 of the Refuse Disposal (Amenity) Act 1978 (RDA). Each WCA currently pays for the operation and maintenance of its own sites.

3.9 The costs of transport and disposal of the residual waste from HWRCs is currently borne by the NLWA and levied to all WCAs based on their number of Council Tax band D equivalent properties (which is the default statutory position set out in the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006).

3.10 The costs of purchasing of land for further sites are currently borne by the WCA in which the site is going to be located.

IAA Charging Mechanisms for HWRCs

3.11 The IAA proposes a new method of cost apportionment which moves away from the default statutory position set out in the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006.

3.12 The IAA commits the signatory parties (of which Enfield is one) to changes in relation to the Levy by which the costs of the NLWA's activities are recovered from the WCAs in relation to HWRCs controlled by the NLWA. The IAA draft currently requires that the costs of these will be apportioned based on a periodic visitor survey, and the costs of transporting and disposing of residual waste from those WCAs that do not transfer their sites is apportioned on the same basis.

- 3.13 The IAA requires these changes to be introduced at Service Commencement (i.e. the date at which the first new facility for the receipt of waste delivered by the Constituent Boroughs is commissioned under the NLWA's new contract) which is expected to be in 2016/17. The IAA reflects that the current default levy arrangements would apply prior to this date with a mechanism available for this to be varied in the interim if the required unanimous agreement can be reached.
- 3.14 However to achieve this, unanimous agreement is required from all 7 WCAs (Barnet, Camden, Enfield, Hackney, Haringey, Islington and Waltham Forest), in the form of a Council Resolution. To date all WCAs with the exception of Barnet have agreed this and subject to Barnet's approval this will take effect from the commissioning of the first facility which is anticipated to be in 2016/17.
- 3.15 Payment under the IAA is structured as follows:
- WCAs will continue to pay the levy in accordance with the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 until 1st April 2012. This method applies a flat rate per tonne which does not reflect the actual treatment cost per tonne of household waste and then all other costs (administration and HWRC residual waste) are apportioned via the number of council tax band D properties in each borough each year.
 - If agreed by the parties until the date that the 'Charging Mechanism' comes into effect (which is on service commencement, which is anticipated to be 2016), Transitional Menu Pricing (TMP) may take effect. This is defined as a transitional recharge arrangement for the recovery of the NLWA's costs from the WCAs based on a menu of costs which will be considered in good faith by the NLWA and the WCAs. The detail of this in relation to HWRCs is set out in this report and if agreed by all boroughs through Council Resolutions will form part of Schedule 4.
- 3.16 This report neither recommends nor seeks approval to any other transitional charging beyond HWRCs to be included in schedule 4 of the IAA.

Transfer of Household Waste and Recycling Centres (HWRCs)

- 3.17 As currently drafted in the IAA, the WCAs agree to transfer the HWRCs to the NLWA by April 2012 if listed in Schedule 5. Barrowell Green is currently listed. However a final decision on this has not been made pending further information regarding the proposed service provision and cost apportionment.

- 3.18 In addition the Government has clearly set out its intention to repeal section 1 of the Refuse Disposal (Amenity) Act 1975 (RDA) from the 1st April 2012. This will remove the duty for WCAs to run HWRCs. NLWA have a duty to arrange for places to be provided for residents to dispose of their household waste under section 51 of the Environmental Protection Act 1990.
- 3.19 Due to the pending repeal of the RDA 1975, the desire to manage the HWRC network under one arrangement for consistency across the network and economies of scale ahead of the main contract in 2016/17, options have been considered by the NLWA in consultation with borough officers to try to achieve this.
- 3.20 Subject to the following assurances from NLWA that:
- a) The same service level provision in the interim years, for example opening hours and range of materials to be recycled
 - b) NLWA or its subtenant will maintain the site in a reasonable state of repair throughout the period of the Lease,
 - c) the operational costs of the service will offer better value for money or the same as they currently are in the interim period
 - d) The terms of the Lease of Barrowell Green Recycling Centre are acceptable to this Council.
- 3.21 It is proposed that the HWRC is transferred to the NLWA by a lease excluded from the security of tenure provisions of the Landlord & Tenant Act 1954 at a peppercorn rent for the term of the contract as set out in the IAA. Transfer of HWRC operations is under the following provisions:
- The site is to be used for waste management only
 - The transfer is on the basis of a lease at a peppercorn rent closely linked to the Waste Management Contract duration.

Proposal to vary the Levy for HWRCs from 2012/13 until the IAA

- 3.22 At a meeting of Directors of Environment and Finance from the Constituent Boroughs on 13th October 2011 the Directors formed an officer consensus to propose to vary the levy for HWRC's only from 2012/13 until service commencement of the main replacement contract anticipated to be 2016/17 as follows to ensure the minimal budgetary impact and the maximum budget certainty:
- 3.22.1 All costs in relation to the transport and disposal of residual waste to be apportioned based upon the proportion of Council Tax Band D equivalent properties (both for sites in the NLWA's control and those that continue to be operated by constituent Boroughs);

- 3.22.2 All other costs in relation to existing sites (including planning, construction, equipping and operation of HWRCs, including staffing, utilities, premises, reuse, recycling, composting (costs and/or income)) are apportioned in accordance with the constituent council within which each HWRC is situated; and
- 3.22.3 That the costs of the NLWA's proposed freehold purchase of land at Cranford Way from Haringey to construct a replacement for an existing HWRC within the Borough are apportioned based upon the results of a recent visitor survey at the nearby site that the proposed Cranford Way HWRC is proposed to replace. After Service Commencement any costs of land at Cranford Way will be apportioned in line with the IAA.
- 3.23 The details of this and the amendments are set out in Appendix 1.
- 3.24 The following apportionment will apply both during the interim period as set out above and after service commencement. They will be reflected as such in the IAA:
- 3.24.1 With the exception of the land at Cranford Way, all of the costs (including the freehold or leasehold purchase of land) in relation to any new HWRCs are levied based upon the proportion of the total households from each WCA within a two mile radius of that site. After the site is operational a new visitor survey will be undertaken and the above costs will be apportioned in accordance with it for the next financial year. The visitor survey will in any case be updated periodically by the NLWA. The proportion of costs relating to visitors from outside of the NLWA area will be borne by the WCA in which the HWRC is situated as it can reasonably be expected those boroughs will have some residents using sites outside the NLWA area at no cost to the NLWA. This is broadly reflected at present in the draft IAA in relation to all sites post-service commencement will be amended accordingly to reflect this more defined approach.
- 3.24.2 The IAA reflects that existing sites will be transferred to the NLWA on a leasehold basis at peppercorn rent. It is therefore proposed so that the IAA can be promptly executed that the levy is varied to reflect that any premises costs such as rent that are charged by any WCA is levied in full from that WCA by the NLWA to neutralise it.
- 3.25 By agreeing the revision to the JWDA's Regulations 2006 in this report for the levying of HWRC costs from 2012/13 this will provide boroughs with the flexibility to transfer their sites at the most suitable time over the coming years without being financially disadvantaged during the years they continue to operate them directly or through existing contracts.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Not to agree to amend the Levy and continue with the statutory default until the IAA becomes effective. The default position in relation to the levying of HWRC costs in NLWA control is that all costs would be levied in relation to the proportion of Council Tax Band D equivalent properties, including those WCAs that do not transfer HWRCs to the NLWA in that year. The costs in relation to any sites still under the control of a WCA would continue to be borne by that WCA as they are currently. Therefore, under this arrangement there will not only be considerable shifts in the amount that each WCA pays for the service against the current pattern but any WCA that do not transfer their HWRCs will not only solely bear the operating costs of any such sites but also a proportion of the operating costs of any sites that do transfer based on their proportion of Council Tax Band D properties.
- 4.2 To agree to the amendment to the levy but not to transfer the HWRC until 2016/17 or service commencement.

5. REASONS FOR RECOMMENDATION

- 5.1 The variations allow the costs of HWRCs operated by the NLWA to be levied broadly in line with how the costs currently fall whilst they are in WCA control, and for any land purchased for the development of new HWRCs to be apportioned based on the anticipated and surveyed number of visitors to that site from each WCA.
- 5.2 The proposal also allows for boroughs to transfer sites gradually rather than with an ultimate date of April 2012 as contracts end. The current levy arrangements would financially penalise boroughs in this respect.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 The proposed amendments to the levy in respect of HWRCs as set out in this report are designed to allow authorities to transfer their HWRCs to the NLWA with minimal disruption to their current budgetary positions. The rationale for this approach is set out in the report.
- 6.1.2 The proposed transitional arrangement will be effective from April 2012 up until service commencement (2016/17). After that, if all seven boroughs sign up to the IAA, then all future costs associated with HWRCs will be apportioned on the basis of visitor survey.

6.1.3 The NLWA estimates that purchase of the Land at Cranford Way will cost Enfield a maximum £89 per annum.

6.2 Legal Implications

6.2.1 NLWA is established as a London Waste Disposal Authority under Schedule 1 of the Waste Regulation and Disposal (Authorities) Order 1985. Schedule 1 lists Enfield as one of seven Constituent Councils of the NLWA.

6.2.2 The Council has a duty to deliver for disposal all waste which is collected by the Council to places that the NLWA directs under section 48(1) of the Environmental Protection Act 1990 (the EPA). This does not include any waste that the Council has made arrangements for the recycling of (section 48(2) of the EPA).

6.2.3 Any contract that the NLWA enters into for the disposal of waste delivered to it by the WCAs will impact upon the Council. This is because the Council will have to pay the NLWA for services delivered under the waste services contract (for greater detail on this, please see the financial implications above). As the Council will not be a party to the contract that the NLWA enters into, following on from the current procurement exercise, the IAA provides an interface between the NLWA and the WCAs concerning the waste disposal contract including payment and the HWRCs.

6.2.4 With reference to the proposed lease of Enfield's HWRC, the Council must comply with the provisions of s123(1) of the Local Government Act 1972. Under this section the Council has the power to dispose of land held by it in any manner it wishes. Under sub-section (2) the council is required to obtain the Secretary of State's consent unless it is intending to dispose the land by way of a short tenancy, i.e. a tenancy which is for a term not exceeding seven years. The proposed lease is for a term of 30 years therefore the consent may be required.

6.2.5 It is for the Council to decide whether any proposed disposal requires specific consent under the 1972 Act, since the Secretary of State has no statutory powers to advise authorities that consent is needed in any particular case. Property Services has advised at paragraph 6.3.3 that the transfer by way of lease for a peppercorn represents a disposal for best consideration reasonably obtainable given the proposals set out at paragraphs 3.20 and 3.21. As such, in these circumstances the disposal of the land by way of lease is not considered to require the consent of the Secretary of State.

- 6.2.6 Before entering in to the lease the Council must carefully consider the terms of a proposed lease to NLWA to ensure that those items in paragraph 6.3.3.3 are addressed. The Council should ensure that the heads of terms of the proposed lease are agreed as soon as possible and the disposal complies with the Council's Property Procedure Rules.
- 6.2.7 In respect of the acquisition of property the Council has the power to acquire by agreement interests in land under s.120 of the Local Government Act 1972 for the purposes of any of their functions or for the benefit, improvement or development of the area. Any such acquisition should be in consultation with Property Services and be accordance with the Council's Property Procedure Rules.

6.3 Property Implications

- 6.3.1 Any transfer of the Council's property must accord with the 'best value' principle and the Council's Property Procedure Rules. It is understood that the proposed transaction is essentially a contract for the provision of a service (waste disposal) by a contractor partner (yet to be appointed), which will utilize the existing Waste Recycling Centres, belonging to the seven constituent Boroughs, by means of leases. The contractor will only be able to use these sites to perform its contract with these Boroughs.
- 6.3.2 The two property issues to be considered in this proposed transaction by this Council are a) the Leasing of Barrowell Green Recycling Centre to the NLWA which will sublease it to the successful operator following a tender process and b) the reference to the NLWA purchasing additional sites, including any additional site within this Borough.
- 6.3.3 a) The Leasing Issues:
- 6.3.3.1 It is understood that the seven constituent Boroughs have agreed in principle already, via the IAA, that each Recycling Centre will be leased to the NLWA and the future subtenant, at peppercorn rents, rather than the existing use market rents. It is assumed that the premise for this is that the contractor would merely pass on the rental charges to the NLWA which would add this to the levy charged to the Boroughs.
- 6.3.3.2 Provided that the Lease of Barrowell Green Recycling Centre and the other sites are completely tied into the Waste Management Contract, it is reasonable to state that this proposed disposal at a peppercorn rent is at the best consideration reasonably obtainable in the circumstances and this is in tandem with the IAA Agreement.

6.3.3.3 However, the other terms of the proposed draft lease, which has been forwarded to Legal and Property Services, cannot be recommended for agreement, without substantial amendment. Such terms include
i) the length of lease to be granted together with break clauses (if appropriate), ii) responsibilities for operational costs iii), the ability or otherwise to assign or sublet the lease, iii) the condition of the premises upon handover together with repairing and maintenance responsibilities, iv) the way in which capital improvements should be treated at the end of the lease in term, v) user clauses controlling the days/hours of use and the precise use of the site itself, and other terms usually found within a commercial lease.

6.3.4 These other terms of the Lease will need to be negotiated in order that officers confirm that they are the best terms reasonably obtainable.

6.3.5 b) Purchase of additional sites

Section 3.24 of this Report and other supporting information, refers to the possible purchase of additional freehold or leasehold sites in due course. If, for example, this occurs in this Borough, it is understood that this Council would have to pay most of the acquisition cost, but would not be able to negotiate the purchase of the site and the site would not belong to this Borough at the end of the 30 year Waste Management Contract. The details of this proposed arrangement require further investigation.

6.3.6 It is recommended that agreement to the final Lease and Contract terms, in so far as they relate to This Council, should be delegated to the Director – Environment and Director of Finance and Corporate Resources and Customer Services, in consultation with the Cabinet Member for Environment and Cabinet Member for Finance and Property.

7. Human Resources Implications

Consultation has already taken place with staff currently employed at the Recycling Centre, and this consultation should be regular and ongoing. Where TUPE applies, the Council will act in accordance with TUPE regulations.

8. KEY RISKS

It is important that the Council along with the other 6 boroughs in the NLWA approve the recommendation to vary the levy so that Enfield has the flexibility to transfer Barrowell Green at the appropriate time, rather than with an ultimate date of April 2012 which through the current levy arrangements could financially penalise Enfield and the other boroughs in this respect.

9. IMPACT ON COUNCIL PRIORITIES

9.1 Fairness for All

The variation to the levy and the transfer of the site has no direct implications relating to fairness and equality, but should help ensure that all Enfield residents receive an efficient waste collection and recycling service in future years.

9.2 Growth and Sustainability

The transfer of the HWRC site should deliver economies of scale and enhanced performance and so seeks to support the reduction in waste and increases in recycling in North London.

9.3 Strong Communities

None.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

10.1 The NLWA and WCAs agree to the 50% recycling target for 2020 and that 40% will arise from WCAs waste collection systems whilst 10% will come from NLWA's waste services contract which includes HWRC's.

10.2 In Enfield, through the roll out of the wheeled bin service borough wide which will be complete by autumn 2012 this target is achievable, based on the roll out to date.

Background Papers

Report No.206 - Approval of the Inter Authority Agreement Statement of Principles between the North London Waste Authority and Enfield Council (Cabinet – 13th July 2011 - KD 3277).

Glossary

ISOS	Invitation to Submit Outline Solutions
ISDS	Invitation to Submit Detailed Solutions
CFT	Call for final Tenders
IAA	Inter Authority Agreement
WCA	Waste Collection Authority
NLWA	North London Waste Authority
SRF	Solid Recovered Fuel

**TMP
HURC
GMT
MTG**

**Transitional Menu Pricing
Household Waste and Recycling Centre
Guaranteed Minimum Tonnage
Minimum Tonnage Guarantee**

STATUTORY INSTRUMENTS

**Appendix 1 - Alternative Form of Levy Regulations to be
adopted by NLWA constituent authorities
LOCAL GOVERNMENT, ENGLAND**

FINANCE

The Joint Waste Disposal Authorities (Levies) (England)
Regulations 2006 **No. 248**
(As amended for the NLWA area)

*Made - - - - 6th February 2006
Laid before Parliament 8th February 2006
Coming into force - - 1st March 2006*

The Secretary of State for the Environment, Food and Rural Affairs makes the following Regulations in exercise of the powers conferred by sections 74 and 143(1) and (2) of the Local Government Finance Act 1988(a).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Joint Waste Disposal Authorities (Levies) (England) Regulations 2006 and come into force on 1st March 2006.

(2) These Regulations apply to England only.

(3) In these Regulations—

“the 1985 Order” means the Waste Regulation and Disposal (Authorities) Order 1985(b);

“the 1992 Regulations” means the Levying Bodies (General) Regulations 1992(c);

“constituent council” means, in relation to a joint waste disposal authority, a council specified in relation to that authority in Schedule 1 to the 1985 Order;

“financial year” means any period of twelve months beginning with 1st April;

“joint waste disposal authority” means any of the authorities established under the 1985 Order and named in Schedule 1 to that Order.

(a) 1988 c. 41. Section 74 was amended by the Local Government Finance Act 1992 (1992 c. 14), sections 117(1) and Schedule 13 paragraph 72(1) and (2), the Local Government (Wales) Act 1994 (1994 c. 19), section 20(4) and Schedule 6, paragraph 21, the Environment Act 1995 (1995 c. 25), section 120 and Schedule 1, the Greater London Authority Act 1999 (1999 c. 29), section 105, the Criminal Justice and Court Services Act 2000 (2000 c. 43), section 74 and Schedule 7, Part II, paragraphs 84 and 85, the Courts Act 2003 (2003 c. 39), section 109(1), and Schedule 8, paragraph 305(a), the Regional Assemblies (Preparations) Act 2003 (2003 c. 10), section 17(6) and paragraphs 3(1) and (2) of the Schedule, and the Fire and Rescue Services Act 2004 (2004 c. 21), section 53(1) and Schedule 1, paragraph 68(1) and (2). The functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, article 2, Schedule 1.
(b) S.I. 1985/1884, amended by the Radioactive Substances Act 1993 (1993 c. 12), section 50 and Schedule 6, Part IV, S.I. 1986/564 and 2001/1149.
(c) S.I. 1992/2903 amended by S.I. 2001/3649.

Scope

2. These Regulations apply in relation to levies—

- (a) issued by joint waste disposal authorities; or
 - (b) anticipated by constituent councils of joint waste disposal authorities,
- in respect of any financial year beginning on or after 1st April 2006.

Levies

3.—(1) A joint waste disposal authority may, in accordance with these Regulations, issue levies on its constituent councils to meet all liabilities falling to be discharged by it for which no provision is otherwise made.

(2) A levy on a constituent council shall be issued by giving the council a demand stating the date or dates on or before which a payment or payments in respect of the levy are required to be made and the amount of that payment or each of those payments.

(3) Subject to paragraph (4) the demand shall be given before 15th February in the financial year preceding that to which the levy relates.

(4) In relation to a levy for the financial year beginning on 1st April 2006, the demand shall be given before 3rd March 2006.

(5) The failure by a joint waste disposal authority to give a demand before the dates specified in paragraphs (3) and (4) shall not render the demand invalid because it is issued on or after those dates.

Apportionment of levies

4.—(1) Subject to regulation 5, the amount to be levied by a joint waste disposal authority in respect of any financial year from each of its constituent councils shall be determined by apportioning the total amount to be levied by that authority in that year between those councils as follows—

- (a) in such proportions as all the constituent councils may agree; or
- (b) in the absence of such agreement, by a combination of the following proportions—
 - (i) the costs incurred by the joint waste disposal authority in the disposal or treatment of household waste delivered to it by its constituent councils shall be apportioned between the constituent councils in proportion to the tonnage of household waste delivered by each of these councils to the joint waste disposal authority within the last complete financial year for which data are available;
 - (ii) the costs incurred by the joint waste disposal authority in the disposal or treatment of business refuse that is deposited at places provided by the constituent councils under section 1 of the Refuse Disposal (Amenity) Act 1978(a) shall be apportioned between the constituent councils in proportion to the tonnage of business refuse deposited at such places within the area of each of these councils within the last complete financial year for which data are available; ~~and~~
 - (iii) the costs incurred by the joint waste disposal authority in the planning, construction, equipping and operation of sites provided under section 51(1)(b) of the Environmental Protection Act 1990 (HWRCs), including contract payments, staffing, utilities, premises, reuse, recycling, composting (costs and/or income) and relevant management costs, but excluding the cost of removing residual waste and its disposal (the authority's duty under the Refuse Disposal (Amenity) Act 1978), shall be apportioned between those constituent councils in whose area an HWRC is situated proportionate to the authority's relative costs applicable to each HWRC, such that the authority's above costs of each HWRC are paid in full by the constituent council in which it is situated.
 - (iv) the costs incurred by the joint waste disposal authority in the purchasing of Cranford Way HWRC shall be apportioned between the constituent councils in the following proportions:

Barnet	0.61%
Camden	0.04%
Enfield	0.38%
Hackney	0.19%
Haringey	97.89%
Islington	0.80%
Waltham Forest	0.08%

(v) the costs incurred by the joint waste disposal authority in the purchasing of any further HWRCs shall be apportioned between the constituent councils in proportion to the number of households in each constituent council that exist within a two-mile radius of the entrance to the HWRC until a visitor survey has been undertaken by the Authority. Once a visitor survey has been undertaken by the Authority for any such HWRC the costs as at clause (iii) above shall be recovered from the constituent councils from the next financial year onwards in proportion to such visitor survey; visitors from outside the Authority's area shall be treated as visitors from the borough in which the HWRC is situated. Further visitor surveys may be undertaken by the Authority in future years, which shall be used in place of previous visitor surveys from the financial year after they are undertaken, including for the avoidance of doubt Cranford Way; and

(vi) ~~(iii)~~ all other costs not falling within paragraphs (i) ~~or~~ (ii) (iii) (iv) or (v), shall be apportioned between the constituent councils by reference to the relevant proportion.

(2) For the purposes of paragraph 1(b) (vi) ~~(iii)~~, "the relevant proportion" is the relevant proportion determined in accordance with paragraphs (5) to (7) of regulation 6 of the 1992 Regulations but as if, in those paragraphs, the references to —

(a) "levying body" were references to a joint waste disposal authority; and

(a) 1978 c.3. Section 1 has been prospectively repealed, in relation to England and Wales, by the Environmental Protection Act 1990 (1990 c.43) section 162 and Schedule 16, Part II, as from a day to be appointed. Amended by the Environmental Protection Act 1990, section 162, Schedule 15, paragraphs 19(2) and (3) and S.I. 1985/1884. Modified, in relation to the area of a London waste disposal authority, by S.I. 1985/1884.

(b) “relevant authority” and “billing authority” were references to a constituent council.

(3) Where paragraph (1)(b) applies to the determination of a levy to be issued in respect of any financial year beginning on or after 1st April 2007, a constituent council shall, within the period beginning on 1st December and ending on 31st January in the financial year preceding the financial year in respect of which the levy is to be issued, inform the joint waste disposal authority of—

- (a) the tonnage of household waste delivered to the joint waste disposal authority for disposal or treatment within the last complete financial year for which data are available;
- (b) the tonnage of business refuse that was deposited at places provided by the constituent council under section 1 of the Refuse Disposal (Amenity) Act 1978 within the last complete financial year for which data are available; and
- (c) the council tax base, determined in accordance with paragraphs (6) and (7) of regulation 6 of the 1992 Regulations, for its area, in respect of which a levy will be issued or it anticipates that a levy will be issued in the immediately following financial year.

(4) In this regulation—

“household waste”, has the same meaning as in section 75 of the Environmental Protection Act 1990(a);

“business refuse” means refuse falling to be disposed of in the course of a business, and “refuse” has the same meaning as in section 1(7) of the Refuse Disposal (Amenity) Act 1978.

Special provisions relating to the Greater Manchester Waste Disposal Authority

5.—(1) The amount to be levied by the Greater Manchester Waste Disposal Authority in respect of any year from the council of the metropolitan district of Wigan shall not include any amount relating to the Authority’s waste disposal functions and, accordingly, that amount shall be borne by the other constituent councils of the Authority in such proportions as they may agree or, in default of agreement, in the proportions specified in regulation 4(1)(b).

(2) In this regulation, “waste disposal functions” means functions vested in the Greater Manchester Waste Disposal Authority by virtue of regulation 5 of, and Schedule 2 to, the 1985 Order which are not exercisable by the Authority in the metropolitan district of Wigan.

Interest on unpaid levies

6.—(1) Where any amount of a levy is not paid by the due date for payment specified in the demand issued under regulation 3, the constituent council shall be liable to pay to the joint waste disposal authority interest, calculated in accordance with paragraph (2), on the amount of the levy issued under these Regulations which remains unpaid after the due date for payment.

(2) The interest payable under paragraph (1) shall be simple interest calculated from day to day on the unpaid amount from the due date for payment until the date when payment is made at a rate equivalent to 2 per cent. above the highest base rate quoted from time to time by any of the reference banks.

(3) For the purposes of paragraph (2) “reference banks” shall be interpreted in accordance with paragraphs (3) to (5) of regulation 10 of the 1992 Regulations (interest on unpaid levies).

(a) 1990 c.43, Section 75 was amended by the Environment Act 1995 (1995 c. 25) section 120(1) and (3), Schedule 22, paragraphs 88 (1) to (4) and Schedule 24. There is other amending legislation in relation to Scotland. Modified by S.I. 1994/1056, regulation 19, Schedule 4, Part I, paragraph 9, to include “Directive waste” as defined in regulation 1(3), Schedule 4, Part II of those Regulations.

Anticipation of levies

7.—(1) A constituent council making calculations in accordance with section 32 or, as the case may be, section 43 of the Local Government Finance Act 1992^(a) (“the calculations”) for a financial year (“the year”) may anticipate a levy to be issued on it in accordance with these Regulations for the year by a relevant joint authority in any case where—

(a) such a levy has not been issued by the relevant joint authority on the constituent council at the time the calculations are made; and

(b) the relevant joint authority issued a levy for the preceding financial year.

(2) Subject to paragraph (3), where pursuant to paragraph (1) a constituent council anticipates a levy to be issued by a relevant joint authority for the year, the amount of the levy so anticipated shall be equal to the constituent council’s estimate, at the time the calculations (or last calculations) are made, of the amount of the levy which it considers likely will be issued on it for the year by the relevant joint authority.

(3) Where a levy has previously been anticipated by a constituent council for the purposes of the calculations for the year, the amount of the levy which may be anticipated by the constituent council for the purposes of any substitute calculations for the year shall be equal to the amount previously anticipated.

(4) Notwithstanding that a constituent council making calculations for a financial year anticipated a levy to be issued on it in accordance with these Regulations by a relevant joint authority—

(a) where the relevant joint authority issues a levy on the constituent council in accordance with these Regulations, the constituent council shall pay to the relevant joint authority a sum equal to the amount of the levy; and

(b) where the relevant joint authority does not issue a levy on the constituent council in accordance with these Regulations, the constituent council shall not be liable to pay any sum to the relevant joint authority only by virtue of having anticipated a levy from the relevant joint authority.

(5) In this regulation, a “relevant joint authority”, in relation to a constituent council, means a joint waste disposal authority with power under these Regulations to issue a levy on that council.

Transitional provisions

8.—(1) Save as provided in paragraph (2), the 1992 Regulations shall cease to apply to levies issued or anticipated in accordance with these Regulations in respect of any financial year beginning on or after 1st April 2006.

(2) In relation to levies issued or anticipated in respect of the financial years beginning on 1st April 2006 and on 1st April 2007—

(a) regulation 4 of these Regulations (apportionment of levies) shall apply to the levies issued by the joint waste disposal authorities specified in the first column of the Schedule to these Regulations in the proportions specified in the second column of that Schedule for each of those financial years; and

(b) regulation 6 of the 1992 Regulations (apportionment) shall continue to have effect in relation to the proportion of the levy not covered under sub-paragraph (a).

^(a) 1992 c.14. Sections 32 and 43 were amended by the Police Act 1997 (1997 c. 50), section 134(1), Schedule 9, paragraphs 67 and 68(2) and (3), the Criminal Justice and Police Act 2001(2001 c. 16), section 137, Schedule 7, Part 5(1), the Local Government Act 2003 (2003 c. 26), section 127(2), Schedule 8, Part 1, the Serious Organised Crime and Police Act 2005, section 174(2), Schedule 17, Part 2 and S.I. 1994/246, 1995/234, 1996/56, 1999/296, 2000/717, 2005/190. There is other amending legislation in relation to Wales. Modified by S.I. 1993/22, 1995/161 and 1995/2889. Section 43 is disapplied by the Greater London Authority Act 1999 (1999 c. 29), section 85.

6th February 2006

Ben Bradshaw
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE

Regulation 8(2)

TRANSITIONAL ARRANGEMENTS

<i>JOINT WASTE DISPOSAL AUTHORITIES</i>	<i>PROPORTION OF THE TOTAL LEVY FOR 2006 AND 2007 TO WHICH REGULATION 4 APPLIES</i>
North London Waste Authority West London Waste Authority Western Riverside Waste Authority Merseyside Waste Disposal Authority	33.3% for the financial year beginning on 1st April 2006 66.6% for the financial year beginning on 1st April 2007
Greater Manchester Waste Disposal Authority	50% for the financial year beginning on 1st April 2006 75% for the financial year beginning on 1st April 2007

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations confer a power on joint waste disposal authorities established under the Waste Regulation and Disposal (Authorities) Order 1985 (S.I. 1985/1884) (the “1985 Order”) to issue levies on their constituent councils for the purpose of meeting their expenses in respect of financial years beginning on or after 1st April 2006 where, but for section 117 of the Local Government Finance Act 1988 (rates and precepts: abolition), they would have a power under article 7 of the 1985 Order (levies) to require the councils to pay those expenses. These Regulations apply to England only.

The Regulations include provisions as to when levies are to be issued (regulation 3), the apportionment of levies between authorities (regulation 4) as well as special provisions for the Greater Manchester Waste Disposal Authority (regulation 5). The Regulations also make provision for interest on unpaid levies (regulation 6) and the anticipation of levies (regulation 7).

Regulation 8 includes transitional provisions providing for the Levying Bodies (General) Regulations 1992 (S.I. 1992/2903) to cease to apply to levies issued or anticipated by joint waste disposal authorities in respect of any financial year commencing on or after 1st April 2006 except as specified in that regulation and the Schedule to the Regulations.

A full regulatory impact assessment has not been produced for this instrument, as it has no impact on the costs of business.

STATUTORY INSTRUMENTS

2006 No. 248

LOCAL GOVERNMENT, ENGLAND

FINANCE

The Joint Waste Disposal Authorities (Levies) (England)
Regulations 2006

(as amended for the NLWA area)