

# GREATER LONDON AUTHORITY ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part IX: Environmental Functions

##### *Section 351: The Mayor's environmental report*

529. *Section 351* provides that the Mayor will have a duty to produce and publish a "state of the environment report", which will contain information about the environment in Greater London. This state of the environment report is not a strategy for the purposes of sections 41 to 44 of the Act.

##### *Section 352: The Mayor's Biodiversity Action Plan*

530. In 1992 the UK Government signed the Rio Convention on Biodiversity. In January 1994 the Government published 'Biodiversity: The UK Action Plan' (Cm 2428), which sets out broad strategy and national objectives for the promotion and conservation of biodiversity in the UK. In December 1995 the UK Biodiversity Steering Group produced its report, which contains detailed plans for the promotion and conservation of national priority species and habitats and recommended that local biodiversity action plans be developed.
531. The Government response to the UK Biodiversity Steering Group Report (Cm 3260, May 1996) supported the development of local biodiversity action plans to translate the national strategy into action at a local level. Over 100 local biodiversity action plans, drawing on the national plan, are currently being prepared or implemented, including a number of plans which involve local authorities in London.
532. *Section 352* of the Act provides that the Mayor will be required to produce a "London Biodiversity Action Plan" (the Action Plan), which will contain information about:
- the ecology of Greater London,
  - the wildlife of Greater London,
  - proposals for the conservation and promotion of biodiversity in Greater London agreed between the Mayor and persons consulted in relation to the Action Plan,
  - commitments for the conservation and promotion of biodiversity made by such persons.
533. In preparing or revising the Action Plan, the Mayor will be required to have regard to biodiversity plans drawn up by London local authorities and any guidance from the Secretary of State.
534. *Section 41* provides that the Action Plan is a strategy for the purposes of sections 41 to 44 of the Act. As a result, when preparing or revising the strategy, the Mayor is required to consult various bodies: the Assembly, the London borough councils and the Common Council, plus any other body or person which the Mayor considers it appropriate to

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consult. In preparing the Action Plan, the Mayor will need to have regard to national policies (as defined in section 424) and such international obligations as the Secretary of State may notify to the Mayor for this purpose.

**Sections 353 to 361: Municipal waste management**

535. The Environmental Protection Act 1990 ("EPA '90"), as amended by the Environment Act 1995, is the main legislation on waste management in England and Wales. It provides that responsibility for waste management should lie with waste collection authorities and waste disposal authorities. In London, the London borough councils act both as waste collection authorities and as waste disposal authorities. However, in a number of cases, London borough councils work together to carry out their functions as waste disposal authorities through statutory joint waste disposal authorities created by the [Waste Regulation and Disposal \(Authorities\) Order 1985 \(SI 1985/1884\)](#):

<i>East London:</i>	<i>North London:</i>	<i>Western Riverside:</i>
Barking and Dagenham	Barnet	Hammersmith and Fulham
Havering	Camden	Kensington and Chelsea
Newham	Enfield	Lambeth
Redbridge	Hackney	Wandsworth
	Haringey	
	Islington	
	Waltham Forest	
<i>West London:</i>		
Brent		
Ealing		
Harrow		
Hillingdon		
Hounslow		
Richmond-upon-Thames		

536. Other London borough councils act individually as waste disposal authorities:

Bexley	Merton
Bromley	Southwark
Croydon	Sutton
Greenwich	Tower Hamlets
Kingston-upon-Thames	Westminster
Lewisham	

537. EPA '90 places a duty on waste collection authorities to produce waste recycling plans, which contain details of how they will deal with municipal waste and, in particular, make provision for recycling.

538. Work by a cross-sectoral review group, set up by the Department of the Environment, gave rise to the concept of joint municipal waste management strategies. The review group recommended that waste collection authorities and waste disposal authorities work together to produce more comprehensive plans addressing all waste management

options (e.g. waste minimisation, recycling, composting, incineration etc) that may be used in dealing with municipal waste.

539. The 1995 White Paper "Making Waste Work" set out governmental policy on waste. Amendments to EPA '90 made by the Environment Act 1995 require the Secretary of State to prepare a statement containing his policies in relation to the recovery and disposal of waste in England. The Government is currently reviewing the national waste strategy, a draft strategy "A Way With Waste" was published in June 1999, and the final strategy will be published in Spring 2000.
540. The municipal waste management strategy is one of the strategies to which sections 41 to 44 of the Act apply. Those sections make provision which applies to all of the Mayor's strategies, and which require the Mayor to follow certain procedural steps in relation to strategies, including matters to which he is required to have regard, and persons he is required to consult. *Sections 353 to 359* of the Act contain provisions relating to the Municipal Waste Management Strategy.
541. *Section 353* of the Act places an obligation on the Mayor to prepare and publish a municipal waste management strategy for Greater London. This will include proposals and policies for the recovery, treatment and disposal of municipal waste originating in Greater London.
542. When preparing the municipal waste management strategy the Mayor must have regard to waste recycling plans prepared by waste collection authorities in Greater London. In preparing or revising the strategy the Mayor must have regard to the national waste strategy and any guidance issued by the Secretary of State to him for the purpose of implementing, or relating to the content of, the strategy. The Secretary of State has power to issue a direction about the content of the strategy if he considers either that the strategy or its implementation is likely to be detrimental to any area outside Greater London, or that a direction is needed to enable the policies in the national waste strategy to be implemented.
543. When preparing or revising the strategy, the Mayor will be required to consult:
- The Environment Agency,
  - Waste disposal authorities in Greater London,
  - Any waste disposal authority which has a boundary which adjoins Greater London,
  - Local authorities in whose areas waste which originates in Greater London is disposed of, or is proposed to be disposed of,
  - Any other body which is concerned with the minimisation, recovery, treatment or disposal of waste in Greater London, and which the Mayor considers it appropriate to consult,
  - Bodies and persons set out in section 42 of the Act.
544. It is important that the Mayor has the means to ensure that the policies in his strategy are given effect. *Section 356(1)* therefore gives the Mayor, where he considers it necessary for the implementation of the municipal waste management strategy, the power to issue a direction to waste collection and waste disposal authorities in Greater London to carry out a function in a specified manner. *Sections 357(5) and 358(3)* give the Mayor power to issue a direction requiring an authority to provide him with such information as he deems necessary to determine if the authority's proposed waste contracts would be detrimental to the implementation of the strategy.
545. *Section 360(5)* provides that for the purposes of *sections 356(1), 357(5) and 358(3)* of the Act until the municipal waste strategy is published references to the municipal waste strategy shall have effect as if such references were to the national waste strategy. This

will enable the Mayor, in the circumstances set out in those sections, to issue a direction before the municipal waste strategy is published.

546. Waste management in practice is largely dealt with by the private sector, through waste contracts let by local authorities. Authorities' actions are limited by these contracts, which can cover periods of up to 25 years and involve large amounts of capital investment. Therefore, the Mayor's effectiveness in this area is to some extent dependent on the influence, through his power of direction, he has over existing and new contracts. Long-term contracts should make allowances for some flexibility and adjustment, which will allow the Mayor some room for manoeuvre. But the Mayor cannot use the power of direction to require an authority to exercise a "break clause" in a contract.
547. The Mayor's power to issue directions under *section 356(1)* in relation to existing waste contracts is limited. The Mayor can not direct a waste collection or disposal authority to take any action which would require them to terminate a contract before its expiry date, or to do anything which would result in a breach of any term of a contract. Since some of the information supplied to the Mayor under sections 357 and 358 may be commercially sensitive, the Mayor and his staff are prevented from disclosing information provided by an authority which, in the opinion of that authority, would be exempt or confidential information as defined in the Local Government Act 1972. This will allow the authority itself to claim the protection of section 359 in any particular case but it will be necessary for the information concerned to meet the criteria of the 1972 Act.
548. Because of the size of many waste contracts (especially waste disposal contracts which can run to tens of millions of pounds) they are caught under public procurement regulations made under the European Communities Act 1972. When contracts are caught under these regulations there are special requirements concerning seeking offers in relation to the proposed contracts and confidentiality. When an authority seeks offers under the public procurement procedures, it must generally publish two notices in the Official Journal of the European Communities – the first containing general information as to, for example, the nature and extent of services to be provided, the second notice advertising the authority's invitation to seek offers. The first is usually very general in nature, the second more specific. Once this second notice is published the authority cannot substantially alter the terms without having to go through the procedure again. The Mayor's powers in relation to the contract cease to be exercisable once the second notice has been sent for publication to the Official Journal of the European Communities.

### ***Section 361: waste recycling plans***

549. Under section 49(4) of the Environmental Protection Act 1990 waste collection authorities are under a duty to send draft waste recycling plans to the Secretary of State for the purpose of enabling him to determine whether the requirements set out in section 49(3) of the 1990 Act have been complied with. *section 361* provides that for waste collection authorities in Greater London the plans should be sent to the Mayor, and it is the Mayor who determines whether the requirements have been complied with.
550. Section 49(3) of the 1990 Act provides that the plans should include information on the following:
- the kinds and quantities of controlled waste which the authority expects to collect,
  - the kinds and quantities of controlled waste which the authority expects to purchase,
  - the kinds and quantities of controlled waste which the authority expects to deal with for recycling purposes,
  - the arrangements which the authority expects to make with waste disposal contractors,

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- the plant and equipment which the authority expects to provide,
- the estimated costs or savings attributable to the methods of dealing with the waste in the ways provided for in the plan.

### ***Sections 362 to 369: Air Quality***

551. The national air quality strategy sets air quality objectives derived from health based standards for eight pollutants: benzene, 1-3-butadiene, carbon monoxide, lead, nitrogen dioxide, ozone, fine particles (PM10) and sulphur dioxide. These objectives, with the exception of ozone, were given statutory force by being prescribed in regulations made under section 87 of the Environment Act 1995. In August 1999, the Government published its draft air quality strategy following a review during 1998. The final version will be published in early 2000 and will replace the 1997 strategy.
552. A key tool for delivering the national air quality strategy is the system of local air quality management, introduced by Part IV of the Environment Act 1995. Under local air quality management, local authorities have a duty to assess air quality in their areas to determine whether prescribed objectives are likely to be met by 2005. Where a local authority considers that one or more of the objectives is not likely to be met as a result of national measures alone, it must declare an air quality management area and draw up an action plan identifying measures to achieve the objective(s).
553. The framework for improving air quality across Europe is set out in Directive 96/62/EC (Cm 3587) of 1997, which provides for limit values to be agreed for twelve pollutants. The first of the air quality daughter directives (1999/30/EC) sets limit values for four pollutants: nitrogen dioxide, particles, lead and sulphur dioxide and entered into force in July 1999. The European Commission have now also published their proposal for the second air quality daughter directive, relating to limit values for benzene and carbon monoxide in ambient air. It is expected to be adopted during 2000.
554. *Section 362* of the Act provides for the Mayor to prepare and publish a London air quality strategy, which will contain policies for implementing in Greater London the national air quality strategy and the standards and objectives prescribed under section 87 of the 1995 Act. The London air quality strategy must also contain information about current and likely future air quality in Greater London; the measures which are to be taken by the Greater London Authority, TfL and the London Development Agency for the purpose of implementing the London air quality strategy; and information about the measures which other persons or bodies are to be encouraged by the Mayor to take.
555. The Mayor's strategy may also contain other air quality proposals and policies which the Mayor wishes to include. Although the Mayor may draw upon the work of local authorities, the London air quality strategy will not replace local authority functions under the system of local air quality management.
556. The London air quality strategy is a strategy for the purposes of sections 41 to 44 of the Act. Those sections make provision which applies to all of the Mayor's strategies, and which require the Mayor to follow certain procedural steps in relation to strategies, including matters to which regard must be had, and persons he is required to consult. In addition to the consultees set out in section 42 of the Act, section 362 also requires the Mayor to consult the Environment Agency and local authorities which have a boundary with Greater London.

### ***Section 363: Directions by the Secretary of State***

557. *Section 363* provides for the Secretary of State to give the Mayor directions about the content of the London air quality strategy in subsection (2).

***Section 364: Duty of local authorities in Greater London***

558. *Section 364* provides that the London local authorities will be required to have regard to the London air quality strategy when exercising local air quality management functions under Part IV of the Environment Act 1995.

***Section 365: Directions by the Mayor***

559. *Section 365* provides for the Mayor to be able to direct London local authorities to provide any information, advice and assistance necessary for the drafting of the London air quality strategy.

***Section 367: Directions under the Environment Act 1995***

560. *Section 367* amends section 85 of the Environment Act 1995 to confer certain reserve powers on the Mayor. The Mayor will consequently be able to make, or cause to be made, reviews and assessments of air quality in London, and be able to direct London local authorities to take action if air quality standards and objectives are not being met in their area, or if they are failing to discharge their duties under the 1995 Act regarding air quality. The Mayor must consult a local authority before giving it a direction under this section.

***Sections 368 and 369: Consultation***

561. *Sections 368 and 369* provide that the London local authorities and authorities neighbouring London will be required to consult the Mayor when undertaking reviews and assessments or preparing action plans under local air quality management. The Mayor will also contribute to any action plans drawn up by the London local authorities.

***Section 370: The ambient noise strategy***

562. The Government will be undertaking projects in 1999-2001 to assess the ambient noise climate in England and Wales and to gauge public attitudes to environmental noise. The results will be compared to baselines developed in 1990 and 1991. Over the same period, Government-funded research will investigate links between environmental noise and health.
563. *Section 370* of the Act provides that the Mayor will be required to produce a London ambient noise strategy. The strategy will contain information about ambient noise levels in Greater London and an assessment of the impact of the Mayor's other strategies on them. There will be a summary of the action the Mayor has taken or proposes to take for the purpose of promoting measures to reduce ambient noise levels in Greater London, and the impact of such levels of those living and working in London.
564. "Ambient noise" is defined as noise related to transport, and noise of other descriptions which the Mayor considers it appropriate to include within the strategy. The strategy will not, generally, include noise which may be controlled by a local authority, but the Mayor will be able to include noise from fixed industrial sources within the strategy where considered appropriate.
565. The London ambient noise strategy is a strategy for the purposes of sections 41 to 44 of the Act.

***Sections 371 and 372: Consultation about aviation noise***

566. *Section 371* provides that where proposed changes to aircraft operations have a significant adverse effect on levels or distribution of noise in Greater London, or any part of Greater London, the Mayor will have the right to be consulted where it is reasonably practicable to do so.

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567. Consultation will cover the proposed alteration or addition of routes used or to be used regularly by civil aircraft before arriving at or departing from aerodromes or substantial alterations to the procedures used for managing the arrival of civil aircraft at aerodromes. The Mayor need not be consulted about tactical decisions necessary in day-to-day air traffic control.
568. *Section 372* amends section 35 of the Civil Aviation Act 1982 so that persons managing any aerodrome which has been designated for the purposes of section 35 by an order made by the Secretary of State, are under a duty to consult the Mayor about matters concerning the administration or management of those aerodromes which affect the Mayor's interests.