

EXPLANATORY MEMORANDUM TO
THE JOINT WASTE DISPOSAL AUTHORITIES (LEVIES) (ENGLAND)
REGULATIONS 2006

2006 No. 248

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This statutory instrument introduces a tonnage-based default levy to be issued by Joint Waste Disposal Authorities (JWDAs) on their constituent Waste Collection Authorities (WCAs).

3. Legislative Background

3.1 The legal instrument which created the Joint Waste Disposal Authorities is the Waste Regulation and Disposal (Authorities) Order 1985 (the 1985 Order)¹ under the powers of section 10 of the Local Government Act 1985. Article 7 of the 1985 Order confers powers on the JWDAs to make levies on their constituent authorities “*to meet all liabilities falling to be discharged for which provision is not made*” (Article 7(1)).

Section 117 of the Local Government and Finance Act 1988 (LGFA 1988) abolished the powers of all ‘levying bodies’ (as defined in that section and including JWDAs) to issue levies under the legislation which created them. Thus, the JWDAs levying powers under article 7 of the 1985 Order ceased to have effect as from the coming into force of section 117 of the LGFA 1988.

Section 74 of the LGFA 1988 gives powers to the Secretary of State to make regulations conferring powers on the levying bodies which were deprived of these powers by operation of section 117, to issue levies in respect of any chargeable financial year.

In 1992, the levying Bodies (General) Regulations 1992 (the 1992 Regulations)² were made under the powers of section 74 of the Local Government and Finance Act 1988. These Regulations apply to any levying body in respect of which provision is no otherwise made under section 74 of the 1988 Act in relation to any levy issued on or after 1 April 1993. Thus, as from 1993 the new levying regime in these Regulations applied to JWDAs.

3.2 This statutory instrument, is made under section 74 of the LGFA 1988 to specify a new levying regime for JWDAs based on the tonnage of waste delivered by the WCA for disposal or treatment, rather than based on council tax rates. Thus, as from the coming into force of these Regulations, the general regime set out in the 1992 will cease to apply to these authorities (save as provided in regulation 8 dealing with transitionals).

¹ S.I. 1985/1884

² S.I. 1992/2903

4. Matters of special interest to the Joint Committee on Statutory Instruments

- 4.1 The Regulations do not specify a minimum period between the date of the demand (regulation 3(2)) and the date for payment. This might appear to require some justification given the requirement to pay interest under regulation 6. This approach has been taken in order to maintain a consistent line with the two instruments on which these Regulations are largely based, namely the 1985 Order and the 1992 Regulations, where no such requirement appears. The administrative requirement of “reasonableness” will however apply in this context to prevent a JWDA providing an unreasonably short time for payment. There is also no evidence that the absence of a provision setting the minimum period for payment has created problems in practice under the 1985 Order or the 1992 Regulations.
- 4.2 The Regulations do not specify a date by which constituent councils need to reach an agreement under regulation 4(1)(a) before the default mechanism specified in 4(1)(b) applies to the determination of the levy. This is also the case in the 1985 Order and the 1992 Regulations, where no such date is included.
- 4.3. Regulation 4(3) requires certain information to be provided to the JWDA within a specified period (ending 31st January of the year preceding the financial year to which the levy relates) so that the JWDA can apply the default apportionment mechanism. At first sight it would appear that the absence of a deadline by which agreement can be reached under regulation 4(1)(a) would result in there being uncertainty until the end of the specified period of 31st January, as to whether or not the default mechanism is to be applied.
- 4.4. However, in practice constituent councils will be able to manage this uncertainty, since both the power to agree a default mechanism under regulation 4(1)(a) and the duty to provide information to the JWDA under regulation 4(3) apply only to them. There is no evidence that the absence of a date by which agreement is to be reached has created problems in practice under the 1985 Order or the 1992 Regulations. In addition, no stakeholders have raised this issue in their response to consultation.

5. Extent

- 5.1 This instrument applies to England only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 There are six JWDAs, four in London, 1 each in Greater Manchester and Merseyside which came into existence on 1 January 1986 to assume the waste disposal functions of four areas within the Greater London Council, the Greater Manchester County Council and the Merseyside County Council upon their abolition on 1 April 1986. Between them they cover a total of 35 WCAs. They are corporate bodies with a statutorily specified number of members appointed by each constituent council. The areas covered are those where the Secretary of State thought that there could be advantage in

having joint arrangements for the discharge of waste disposal functions, but where no such arrangements had been made by a specified time.

- 7.2 The functions of a JWDA are funded by a levy on each constituent WCAs in their area. The levy basis is either decided by unanimous agreement between the WCAs or the default basis is used. The default was originally based on populations of the WCAs, but was changed by the Levying Bodies (General) Regulations 1992 to a council tax base figure dependent on the numbers and value of Band D dwellings in each council WCA.
- 7.3 There are a number of failings in the current funding system for JWDAs. The current council tax base levy treats constituent councils inequitably, as compared to the cost the council would incur, were it responsible for its own waste disposal. The levy results in a different per tonne disposal charge for each council within any JWDA. There is no effective financial incentive within the JWDA system for WCAs to minimise the levels of waste arisings or to invest heavily in reuse, recycling or composting schemes. These factors have created tension within the JWDAs and have hindered progress towards more sustainable waste management in these areas.
- 7.4 Government has recognised the failings in the current funding system and has committed to changing it. The Government's primary goal is to help JWDAs to manage waste more sustainably in partnership with their WCAs by introducing a link between the WCAs payments and the tonnage of waste they deliver to their JWDA for disposal. Government undertook a consultation last year on altering the funding arrangements for JWDAs and put forward proposals to introduce a tonnage-based default levy.
- 7.5 Government consulted the six JWDAs, their WCAs and other key organisations. Ninety percent of respondents to the consultation agreed with the principle of introducing a tonnage-based levy as the best way of introducing a link between the size of the levy on the WCAs and the amount of waste they deliver to JWDAs for disposal. This will encourage WCAs to work together more closely with their JWDA to increase recycling and reduce waste.
- 7.5 The consultation included a section on possible transitional arrangements as Government recognised that it could be challenging for some authorities to move to a tonnage-based levy by April 2006. The majority of responses supported the need for transitional arrangements and therefore Government has included a phased approach to a tonnage-based levy over three years in the statutory instrument. These arrangements have been based on the cases where authorities have or are moving to a tonnage-based levy using a phased approach. The full analysis and Government response to the consultation can be found on the Defra website at <http://www.defra.gov.uk/corporate/consult/jwda/index.htm>

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies
- 8.2 There is no impact on the public sector since there will be no net cost associated with the changes proposed. Indeed there should be an overall reduction in cost as the new levy will provide additional encouragement for waste minimisation and for joint working between authorities. The redistributive effects of a change to tonnage will mean increased waste management costs for some WCAs but equally decreased costs

for others and we propose to mitigate these effects in the short term through transitional arrangements.

9. Contact

Fiona Tranter at the Local Authority Funding and Governance Team of Waste Strategy Division at the Department for Environment, Food and Rural Affairs Tel: 020 7082 8431 or e-mail: fiona.tranter@defra.gsi.gov.uk can answer any queries regarding the instrument.