

# Guidance on the Landfill Allowance Schemes: Municipal Waste

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## Landfill Allowance Schemes: Municipal Waste

### 1. Scope of Guidance

1.1. This paper is intended to clarify the approach of Defra and the Welsh Assembly Government (WAG) to the waste which authorities have to report for the purposes of the Landfill Allowance Trading Scheme in England and the Landfill Allowance Scheme in Wales. In relation to England, it supplements the paper issued by Defra in August 2004, 'Municipal Waste, Commercial Waste and the Landfill Allowance Trading Scheme'. This paper also addresses other issues which have emerged since the Scheme came into force on 1 April 2005. The guidance is made under regulation 23 of the Landfill Allowances and Trading Scheme (England) Regulations 2004 (the LATS Regulations) and regulation 16 of the Landfill Allowances Scheme (Wales) Regulations 2004 (the LAS Regulations).

1.2. The Waste and Emissions Trading Act 2003 (WET Act) establishes a regime governing the amount of biodegradable municipal waste sent to landfills by waste disposal authorities. In order to calculate those amounts, the LATS Regulations and the LAS Regulations require waste disposal authorities to keep records not only of the municipal waste they send to landfills (regulation 11(1)(b) of the LATS Regulations and regulation 6(1)(b) of the LAS Regulations) but also of all "collected municipal waste" in their areas (regulations 11(1)(a) and 6(1)(a) respectively). "Collected municipal waste" means municipal waste which "comes into the possession or under the control of (a) a waste disposal authority, or (b) a waste collection authority within the area of the disposal authority, whether or not the waste is in possession or under the control of that authority under or by virtue of the Environmental Protection Act 1990" (regulation 2(1) of both the LATS and the LAS Regulations). The purpose of this guidance is to clarify what is meant by "comes into the possession or under the control" of a waste collection authority (WCA) or waste disposal authority (WDA).

1.3. In order to fall within the LATS or LAS regime the waste must also be "municipal waste". This is defined in section 21 of the WET Act (reflecting article 2(b) of Directive 1999/31/EC) as "(a) waste from households, and (b) other waste that, because of its nature or composition, is similar to waste from households." However, the Guidance published by Defra in August 2004 stated at paragraph 6 that "The Government's view is that the definition of municipal waste in the Landfill Directive encompasses *all* waste under the control of the local authorities be they waste disposal, waste collection or unitary authorities". The Government's interpretation of this definition has not changed. It follows that any waste which passes the test of being in the possession or under the control of a waste disposal or collection authority, and so potentially within the LATS regime, also passes the test of being municipal waste, and so is within the LATS regime.

1.4. Please note that the views expressed in this guidance are those of Defra and the WAG. It is for WDAs to have regard to this guidance in

exercising their functions under the LATS and LAS Regulations (see regulations 23 and 16 respectively). However, ultimately it will be for the courts to interpret the relevant provisions of the Landfill Directive, the WET Act, the LATS Regulations and the LAS Regulations.

## **2. Examples**

2.1. The following examples are intended to show how the test above of whether waste comes into the possession or under the control of a WDA or WCA is applied to certain waste streams, and do not constitute a definitive list.

### **a) Schools Waste**

2.2. Waste from schools will often come into the possession or under the control of WCAs or WDAs because waste from premises forming part of a school ('schools waste') is categorised as "household waste" under section 75(5)(d) of the Environmental Protection Act 1990 (the '1990 Act'). WCAs have a duty under section 45(1) of the 1990 Act to arrange for the collection of household waste. As waste from schools is prescribed under schedule 2 of the Controlled Waste Regulations 1992 (SI 588) as waste for the collection of which authorities may charge, the duty to collect arises only when the school requests the authority to collect.

2.3. Schools waste should be accounted for under the LATS and LAS regimes if it is collected by a WCA or if it otherwise comes into the possession or under the control of the WCA or WDA. If a WCA/WDA is requested to collect or dispose of such waste, and it makes arrangements for the collection or disposal of the schools waste on its behalf, this will result in the waste coming into the possession or under the control of that authority.

2.4. On the other hand, if the school, or the Local Education Authority, makes its own arrangements for the collection of its waste with a private sector contractor, this waste will not come into the possession or under the control of the WCA/WDA at the point of collection, though it may do so subsequently.

### **b) Gully Waste**

2.5. Gully waste is waste washed from drainage channels (including gutters) down the drains into pots underground which are emptied at regular intervals by a tanker. Gully waste will typically comprise leaves, detritus, road chippings, mud, soil, paper and litter and used engine oil.

2.6. Although gully waste is classified as household waste (Schedule 1 of the Controlled Waste Regulations 1992 lists waste to be treated as household waste, and this includes waste arising from the discharge by a local authority of its duties under section 89(2) of the 1990 Act i.e., street cleansing), as explained in paragraph 1.3 above, it can only fall within the LATS or LAS

regime if it comes into the possession or under the control of the WCA or WDA.

### **c) Construction and Demolition Waste**

2.7. Construction and demolition (C&D) waste can similarly only fall within the LATS or LAS regime if it is in the possession or under the control of the WCA/WDA. This will include cases where the WCA makes arrangements for a private sector contractor to manage that waste on its behalf. C&D waste deposited at a WDA's civic amenity sites also clearly comes into the possession or under the control of the WDA. However, if C&D waste is produced by the local authority (for example, when renovating social housing), but is collected and disposed of by a private sector contractor, it will not come into the possession or under the control of the WCA or WDA and therefore cannot fall within the LATS regime.

### **d) Payments for recycling**

2.8. Section 52 of the 1990 Act provides that a WDA or a WCA can make payments to a person other than the WCA for waste collected by that person for recycling. The waste which is the subject of the payments will not necessarily come into the possession or under the control of the WDA or the WCA, and therefore fall within the LATS regime. Whether or not it does will depend on the nature of the arrangements between the WDA/WCA and the recipient of the payments.

## **3. Commercial Waste**

### **a) The Legislative Background**

3.1. WCAs have a duty under section 45(1)(b) of the 1990 Act to arrange for the collection of commercial waste where requested to do so. Section 75(7) of the 1990 Act defines commercial waste as: "waste from premises used wholly or mainly for the purposes of trade or business or the purposes of sport, recreation or entertainment". This definition excludes household waste, industrial waste, agricultural waste and waste from any mine or quarry.

3.2. Commercial waste which is collected by a WCA itself will be waste which comes into the possession or under the control of a WCA, and therefore waste which falls within the LATS regime.

3.3. However, because the duty in section 45(1)(b) of the 1990 Act is to arrange for the collection of commercial waste, it also follows that waste will come into the possession or under the control of a WCA if it is collected by a private sector contractor on behalf of the WCA. There are two main reasons for this. Firstly, the waste will be collected as a means of meeting the WCA's obligations under section 45(1)(b) of the 1990 Act. Secondly, in two-tier areas the WCA will need to ensure that the waste is delivered as directed by the WDA, or recycled in accordance with section 48(2) of the 1990 Act.

Alternatively, in single-tier areas the waste will need to be managed in accordance with section 51 of the 1990 Act.

3.4. If a WCA declines to collect certain types of commercial waste when requested to do so, and does not arrange for its collection by a private sector contractor, it is likely to be acting in breach of its duty under section 45(1)(b). Any WCA thinking of operating a selective service for commercial waste would need to satisfy itself that it was not breaching its duties under the 1990 Act.

**b) The effect of LATS and LAS on the cost of commercial waste collection / disposal**

3.5. Under section 45(4) of the 1990 Act, WCAs may recover a “reasonable charge” for the collection of commercial waste, where appropriate, and under section 52(9), WDAs are entitled to receive from WCAs reasonable reimbursement for making arrangements for the disposal of commercial and industrial waste collected in the area of the WDA. LATS and LAS encourage waste to be diverted from landfill and it may be that overall costs of disposal increase in the short-term. However, Defra does not believe that this need necessarily result in local authorities being priced out of the market for commercial waste collection. Many local authorities already operate successful commercial waste recycling services and Defra would encourage all authorities to consider developing their commercial waste recycling services as such an approach may have significant benefits in helping to meet LATS targets, as well as helping the local authority fulfil its wider role as a community leader. The Enviro / Greater London Authority report ‘Best Practice Guidance: Trade Waste Recycling’, may be a useful source for local authorities hoping to introduce trade waste recycling; it aims to identify the key considerations that need to be taken into account when implementing a trade waste scheme and develops the considerations into a practical, action-oriented plan.<sup>1</sup>

3.6. Defra is aware of the judgement in R (ex parte Western Riverside Waste Authority) v Wandsworth Borough Council but has decided not to comment on the judgement. The decision in this case is very much based on its specific facts and for this reason Defra thinks it would be inappropriate to try to give any general guidance as a result of the case.

**c) Reporting Commercial Waste**

3.7. Regulation 11 of the LATS Regulations and regulation 6 of the LAS Regulations impose an obligation on WDAs to keep specified records and make specified returns to the monitoring authority on all collected municipal waste. Regulations 21 and 14 respectively provide for the imposition of penalties for each requirement imposed by regulations 11 and 6 with which the WDA fails to comply. For the reasons given in paragraph [3.3] above, this

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<sup>1</sup> ‘Best Practice Guidance: Trade Waste Recycling’, Enviro Consulting (March 2005). This report is available on the Defra website:  
<http://www.london.gov.uk/gla/publications/environment/TWRReportFINAL.pdf>

includes keeping records and making returns on waste which is collected by a private sector contractor on behalf of the WCA in the area of the WDA. Therefore, if a WDA is not able to report data on such waste, it will be liable to a financial penalty under section 12(3) of the WET Act. Pursuant to regulation 22 (LATS Regulations) and 15 (LAS Regulations), the Secretary of State and National Assembly for Wales may assess the amount of the penalty and notify the authority of the amount.

3.8. Authorities are also reminded of section 34(1)(c)(ii) of the 1990 Act, which places a duty on any person who imports, produces, carries, keeps, treats or disposes of controlled waste to secure, on the transfer of the waste, that a written description of the waste is also transferred. Regulation 2 of the Environmental Protection (Duty of Care) Regulations 1991 provide that, at the same time as the written description of the waste is transferred, a transfer note should be signed and completed. Under section 48(1) 1990 Act, it is the duty of the WCA to deliver the waste it collects as directed by the WDA for disposal and it is likely that at some point all such waste, whether collected by the WCA directly or by a private sector contractor on the WCA's behalf, will be transferred to the WDA, and at that point the WDA should be in receipt of a written description of the waste and of a transfer note.

#### **4. Reporting with WasteDataFlow**

4.1. The Environment Agency request that all WDAs and WCAs make the data returns required in the LATS and LAS Regulations through WasteDataFlow. This is a tool that enables both WDAs and WCAs to report waste data to government. It is replacing the Municipal Waste Management Survey as of 2004-05.

4.2. It may be necessary to make some modifications to WasteDataFlow to take account of the definitions used for LATS, LAS and the Best Value Performance Indicators. Therefore, as an interim measure, WasteDataFlow should only be used to report waste within the LATS or LAS regime.

#### **5. Mass Balance Calculation**

5.1. The Environment Agency will monitor WDA compliance with the LATS and LAS by undertaking a mass balance calculation. The mass balance approach assumes if the weight of biodegradable materials diverted from landfill can be measured and if the proportion of biodegradable material that was in the waste to start with is known, it is possible to calculate the amount of BMW landfilled.

5.2. The attached annex is a statement from the Environment Agency explaining how the mass balance calculation will operate. This annex does not form part of the statutory guidance made by Defra and WAG.

#### **6. Further Information / Contacts**

6.1. For further information, please contact the Local Authority Waste Performance Team at:

✉ Zone D/13 Ashdown House  
123 Victoria Street  
London  
SW1E 6DE  
☎ 020 7082 8803  
💻 [Landfill.policy@defra.gsi.gov.uk](mailto:Landfill.policy@defra.gsi.gov.uk)

6.2. For queries on the mass balance calculation or the Environment Agency's role as monitoring authority, please contact:

☎ 08708 506 506  
💻 [team@environment-agency.gov.uk](mailto:team@environment-agency.gov.uk)

6.3. For WasteDataFlow queries, please contact:

☎ 0161 874 3602  
💻 [helpdesk@wastedataflow.org](mailto:helpdesk@wastedataflow.org)

September 2005

## **Environment Agency Guidance on the Mass Balance**

There is a statutory requirement on the Environment Agency (the Agency) as the monitoring authority for LATS and LAS to calculate the amount of biodegradable municipal waste (BMW) sent to landfills by each waste disposal authority (WDA) in England and Wales during the scheme year.

In order to do this, the monitoring authority must:

- Step 1 Calculate the amount of BMW by weight in the amount of collected municipal waste for each scheme year;
- Step 2 If components of collected municipal waste are sent to any waste facilities subtract from the amount calculated under step 1 the amount of BMW by weight which is sent to those facilities; and
- Step 3 If any of the collected municipal waste is sent to landfills either after treatment or as rejects from facilities, add the amount of BMW by weight which is sent to those landfills

This is shown in more detail in the example calculation given at the end of the annex.

### Step 1

1. In two-tier authorities a significant proportion of the information relating to collected municipal waste is currently held by Waste Collection Authorities (WCAs). This will be made available by voluntary quarterly returns through the WasteDataFlow (WDF) system. However if returns are not made by a WCA within a Waste Disposal Authority (WDA) area, the duty to provide the information to the monitoring authority rests with the WDA and steps will need to be put in place by the WDA in order to comply.
2. In England the deemed percentage of the biodegradable component of collected municipal waste is 68%. In Wales the deemed percentage is 61%. In England only, there is a requirement on the Agency to keep this under review.
3. To calculate the amount of BMW by weight for each WDA in each scheme year, we will multiply the amount of collected municipal waste for the scheme year by the deemed percentage.

### Step 2

4. The mass balance system calculates the contribution made from each component diverted from landfill, by multiplying its weight by a nominal biodegradable percentage given in table 1.

5. The basis of the nominal biodegradable percentage (table 1) is chemical analysis from the National Household Waste Analysis Programme, published by DoE in 1993. This has been adapted to show components consisting of biogenic carbon to be a 100% biodegradable component, fractions with no carbon or solely fossil carbon to be zero and those with a mixture to be 50%. This is not wholly accurate but is a pragmatic representation of reality. This table appears in the schedule to the Landfill Allowances and Trading Scheme (England) Regulations 2004.

6.

Type of waste	Amount of biodegradable municipal waste (percentage by weight)
Paper and Card	100%
Putrescible waste	100%
Vegetable oil	100%
Footwear	50%
Furniture	50%
Textiles	50%
Mineral oil	0%
Electrical and electronic equipment	0%
End-of-life vehicles	0%
Glass	0%
Inert construction and demolition waste	0%
Metal	0%
Plastic	0%
Soil	0%

Table 1 The percentage biodegradability of separated fractions of MSW

7. The Agency must be provided with type and weight of any collected municipal waste diverted to waste facilities irrespective of whether the waste is biodegradable or not and the final destination of all collected municipal waste.

### Step 3

8. Where collected municipal waste is treated and then landfilled, the Agency needs to know what the biodegradable diversion through loss of biodegradable carbon products has been. A consultation exercise informed the Agency how to monitor the reduction in biodegradability from waste pre-treatment processes.

9. From the monitoring data supplied, the Agency will add the amount of BMW by weight sent to landfill from any treatment facility. We will take into account any reduction in biodegradability of the collected municipal waste achieved by the specific treatment facility.

An example of the mass balance calculation is shown below:

$MSW_T$  = Total Collected Municipal Waste  
 $BMW_T$  = Total Biodegradable Municipal Waste  
 $Div_T$  = Total Collected Municipal Waste Diverted  
 $Div_B$  = Biodegradable Content of Diverted Waste  
 $Res_T$  = Total Residual Waste  
 $Res_B$  = Biodegradable Content of Residual Waste  
 $RB\%$  = Residual Biodegradable Percentage  
 $L_D$  = Directly Landfilled Municipal Waste  
 $L_{Th}$  = Landfilled after Thermal Treatment (Landfill tonnes from Q54, Q55, Q57\*)  
 $L_{MBT}$  = Landfilled after MBT (Landfill tonnes from Q59\*)  
 $MBT_{RF}$  = MBT Reduction Factor (i.e. factor MBT reduces  $RB\%$ )  
 $L_{OT}$  = Landfilled after Other Treatments (Landfill tonnes from Q56, Q58, Q60 to 65\*)  
 $Div_R$  = Rejected Diverted Waste  
 $BMW_L$  = Biodegradable Municipal Waste Landfilled

### **Mass Balance Calculation for England**

Step 1       $BMW_T = 68\% \times MSW_T$   
                   $Res_T = MSW_T - Div_T$   
                   $Res_B = BMW_T - Div_B$   
 Step 2       $RB\% = (Res_B/Res_T) \times 100$  or       $\frac{(BMW_T - Div_B) \times 100}{(MSW_T - Div_T)}$   
 Step 3               $BMW_L = (L_D \times RB\%) + (L_{Th} \times 0\%) + (L_{MBT} \times (RB\% \times MBT_{RF})) + (L_{OT} \times RB\%) + (Div_R \times RB\%)$

### **Mass Balance Calculation for Wales**

Step 1       $BMW_T = 61\% \times MSW_T$   
                   $Res_T = MSW_T - Div_T$   
                   $Res_B = BMW_T - Div_B$   
 Step 2       $RB\% = (Res_B/Res_T) \times 100$  or       $\frac{(BMW_T - Div_B) \times 100}{(MSW_T - Div_T)}$   
 Step 3               $BMW_L = (L_D \times RB\%) + (L_{Th} \times 0\%) + (L_{MBT} \times (RB\% \times MBT_{RF})) + (L_{OT} \times RB\%) + (Div_R \times RB\%)$

\* Question numbers from WasteDataFlow