



To all Local Authority Chief Executives

11 April 2011

Dear Colleague,

Bin charging

As you will be aware, the new Government has been undertaking a comprehensive review of waste policies in England. The messages Defra have been receiving back from local authorities as part of the Review on how we can shape waste policy to help better ensure we achieve value for money have been very helpful; we greatly appreciate your positive and constructive engagement with the Review.

As you may be aware, the Localism Bill going through Parliament abolishes the last Government's proposals to introduce new bin taxes on top of council tax. The new Government believes bin charging would harm the local environment by fuelling fly-tipping and backyard burning, and would impose new costs on families at a time when many are struggling to make ends meet. Indeed, the new Government is providing funding to local authorities to support the freezing of council tax to help hard-working families this year, and we welcome the universal take-up of the council tax freeze over by local authorities.

During the Review process, it has come to our attention that a small minority of local authorities may be exceeding their legal powers in relation to charging householders for waste services. It is clear to us that the overwhelming majority of local authorities are seeking to provide a good quality service which delivers value for money to their customers and environmental benefits for the country. However, there are issues relating to practice by a very small number of authorities. We are therefore writing to all local authorities, even though the advice below is relevant to those who make, or are considering introducing, any charges to householders for household waste services:

Collection of waste

Section 45 (3) of the Environmental Protection Act 1990 specifically bars local authorities from making a charge for the collection of household waste, except in cases prescribed in regulations. The type of household waste for which local authorities may make a charge for collection is therefore restricted to those types of waste which are listed in Schedule 2 of the Controlled Waste Regulations (1992). Examples commonly include garden or bulky wastes. You may not charge for the collection of any other types of wastes, nor do you have the power to levy 'call-out' charges in cases where operatives call at the property but the waste is not collected. You should also note that local authorities have no power to reclaim the cost of disposing of these wastes from the householder.

Waste receptacles

Section 46 (3) of the Environmental Protection Act gives local authorities the power to require householders to use a specific type of receptacle for their waste.

If your Council sets a limit on the number of bins or sacks that will be collected from a single property, but allows householders to purchase additional waste receptacles, you may only charge for the cost of providing the receptacle and not include a fee for collection or disposal of the waste – even if this waste is over and above what your normal waste collection system would allow a householder to present for collection.

You may require that the receptacle meets reasonable specifications, such as being compatible with your collection vehicles, but if you require householders to purchase their own receptacle, whether for all or part of their waste services, you should refrain from creating a monopoly. You may not require the householder to purchase the receptacle from a single supplier. For example, if householders are required to present waste in black sacks, they should be able to choose where to buy their sacks, rather than being restricted to 'official' ones which are only available from the Council. Where receptacles are provided by you, you are allowed to make a charge for the receptacle, whether a bin, box or plastic sack, but you must ensure any charge covers only the cost of providing the receptacle as you do not have the power to impose additional fees to cover collection and/or disposal.

In short, councils cannot introduce 'backdoor' bin charging for mainstream waste collections or waste disposal. Such stealth taxes are not legal and are contrary to the policy direction of the new Government.

We hope that you find this advice helpful in ensuring that your waste services comply with the prevailing legislation. You should also be aware that as part of the Waste Review we are undertaking a review of the enforcement powers and penalties available to local authorities in relation to waste collection and disposal, to ensure that they are proportionate, relevant and respect civil liberties. We are also considering local authorities' behaviour on the ground and identifying best practice. Our officials are currently engaging on these points with the LGA and other key partners representing local authorities.

We are copying this letter to Baroness Eaton and Councillor Gary Porter.

Yours sincerely,



BOB NEILL MP



LORD HENLEY