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Government response to the House of  
Commons Environment, Food and Rural  
Affairs Committee

Fourth report of Session 2004-2005

Waste policy and the Landfill Directive





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Presented to Parliament by the Secretary of State  
for Environment, Food and Rural Affairs  
by Command of Her Majesty  
July 2005

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## **Response to Fourth Report of Session 2004-2005 Report**

### **Quality of data about waste**

**1. The lack of high-quality data is a significant obstacle to the formulation and implementation of public policy. Lack of authoritative data has led to uncertainty among producers and processors of waste and has made it difficult to tell how effectively policies are working in practice. We are glad that Defra has recognised the problems with the existing data available about waste streams, and welcome both the 'Flycapture' database and the more recent support, through the Waste Implementation Programme, for a more comprehensive database of information about municipal waste. Defra should publish a statement setting out what it now intends to do to support work by the Hazardous Waste Forum to establish better information about hazardous waste. We look forward to the speedy implementation of the strategy for producing more comprehensive data about all waste streams, although it is regrettable that it has taken so long for this to be developed. We hope this will bring about a position where all players in the waste field can at least agree on the scale of the problem, even if they disagree over the appropriate solution. (Paragraph 13)**

Over the last year, Defra's Waste Implementation Programme (WIP) has been taking forward the development of a national waste data strategy, in consultation with experts and stakeholders from inside and outside government. Having consulted publicly on the strategy, work will now centre on implementation, supported by senior-level stakeholder input (through a Data Advisory Panel) and close co-operation with the Environment Agency.

Initial work will address the key municipal, industrial and commercial and construction and demolition waste streams (including hazardous waste, imports and exports and waste covered by producer responsibility obligations). This will build on the collection and dissemination of data for monitoring purposes undertaken by the Environment Agency already as part of its regulatory role.

In relation to hazardous waste, the strategy will help to improve major gaps in the data such as complete information on the number of sites and facilities that exist, and their capacity for dealing with this type of waste; tracking movements of hazardous waste across different parts of the UK; and, information on hazardous waste arisings in different producer sectors or regions, and how that waste is currently being managed.

The Government, on 24 March, laid in Parliament the Hazardous Waste (England and Wales) Regulations 2005. These regulations, which come fully

into force in England and Wales on 16 July 2005 will underpin the new hazardous waste reporting system. These new provisions will streamline existing controls for the tracking and consignment of hazardous waste as well as improve its overall management. Whilst the new online reporting systems are being developed further data is being provided by the Environment Agency who are currently reporting the results of the 2001/02 Commercial and Industrial Waste Survey. During 2005 they will also update and re-issue the Regional Strategic Waste Management Assessments with the latest data on all existing waste streams.

Data on hazardous waste is also available through the Special Waste Tracking database (SWaT) managed by the Environment Agency. Details are available on the types of special waste produced, by region, and by fate. This database is retrospective, though clearly it is possible to make judgements about future arisings of hazardous waste, based on past trends.

These systems will replace the previous sample surveys undertaken by Defra, the Environment Agency and ODPM.

**2. It is not clear to us that Defra's data strategy includes the kind of information on future predictions of waste generation by local authorities, which the Local Government Association seeks to compile, as opposed to historic data on waste streams. This kind of information is important, in order to allow for effective forward planning by local and national government, and to inform investment decisions by private companies which may be contemplating building waste treatment facilities. It is especially relevant in the context of the forthcoming Landfill Allowance Trading Scheme. We therefore recommend that Defra re-consider the LGA's request for funding to support this project. (Paragraph 14)**

Defra, and the Environment Agency are already working closely with the Local Government Association (LGA) and other local government stakeholders to develop the most appropriate arrangements for the collection of data based on local authorities' projections. This should help authorities to develop improved strategies for managing their landfill allowances, and further clarify their need for new sites and facilities as landfill diminishes in importance. It could also help to deliver confidence about the development of an efficient trading market under the new Landfill Allowance Trading Scheme (LATS).

We agree that work should be taken forward quickly in this area. An additional consideration is whether this could be linked with a wider data collection exercise, which the Office of Government Commerce (OGC) is planning for its new programme work to improve the operation of the municipal waste market. This type of approach could help in capturing forward demand as well as comprehensive supply-side data on municipal waste, including some wider wastes. It is also possible that this could provide more resources and funds

from central government, at least for an initial period, to deliver the information that local authorities need.

In addition, Defra and the Environment Agency are working jointly on the use of a predictive model REWARD to calculate expected waste volumes. This work is part of the review of "Waste Strategy 2000" which is currently underway. REWARD was developed jointly by the Environment Agency and Regional Development Agencies specifically to support Regional Waste Planning work.

### **Uncertainty**

**3. The 'uncertainty' referred to by witnesses is attributable both to confusion within the waste legislative framework itself, and a feeling that the Government and its agencies have not done enough to explain how it will work. We note the Government's argument that it has done a great deal to communicate with the industry and other stakeholders. We also accept that such stakeholders also have responsibilities: trade associations, for instance, should ensure that information is passed down the line, and the waste management industry could do more to communicate to waste producers. But Government has the principal responsibility to ensure that legislative proposals, information and guidance are produced early enough to be helpful, and in the clearest possible form. We are not convinced, from the evidence we received, that they have done so in respect to information about waste policy, especially for waste producers (Paragraph 17)**

One of the Government's key aims has been on communications both with the waste industry and producers in the run up to the implementation of the Waste Acceptance Criteria and Hazardous Waste Regulations.

The Government set up the Landfill and Hazardous Waste Implementation Programme (LHIP), and within that an integral communications group. This includes representatives from the two main bodies representing the waste industry: the Environmental Services Association and the Chartered Institution of Wastes Management (CIWM) as well as the Small Business Service. This group has produced a comprehensive communications strategy on hazardous waste encompassing a wide range of media. Joint Environment Agency and Defra seminars on the Landfill Waste Acceptance Criteria were held to encourage understanding of the implications of WAC and on ensuring industry's preparedness. Both seminars were well attended and positively received.

Regional seminars have been organised to communicate the issues on landfill and hazardous waste especially to small businesses, with partners including the CIWM, the Environment Agency and Government Offices. We have also set up with the DTI an industry-working group specifically to deal with the issue of waste oil and the implications of the Waste Incineration Directive on



the management of this waste stream which makes up 20% of the hazardous waste total.

In addition, the Government and the Environment Agency have produced guidance for waste producers on landfill and hazardous waste issues. A full list of the available landfill and hazardous waste guidance has been made available to stakeholders, including the Hazardous Waste Forum, and is available on Defra's and the Agency's websites. A dedicated one stop shop website has been set up for advice to business on hazardous waste issues. An alert leaflet was produced for small and medium sized enterprises, and Government officials responsible for landfill policy and hazardous waste have spoken at numerous conferences and seminars on the issue.

We have funded the development of NetRegs an internet web site operated jointly by the Environment Agency, the Scottish Environment Protection Agency and the Northern Ireland Environment and Heritage Service. This web site provides industry focused guidance and advice to SMEs on environmental legislation and is being used to provide critical messages to SMEs on waste. It also provides technical support for SMEs through a team of dedicated advisers on waste and other issues, supported by a telephone helpline specifically on landfill and hazardous waste issues.

Finally, the Envirowise programme, jointly funded by Defra and DTI, is supporting the whole process and is aimed specifically at helping SMEs deal with their waste.

The Government has always said that industry and trade associations need to play their part and to a large extent this has been the case.

### **European legislation**

**4. Problems with the way in which EU waste legislation has been implemented have added to the uncertainty we have already mentioned. The Government must in future avoid, wherever possible, agreeing to new European legislation without a full understanding of the details of how such agreements will be interpreted and implemented. The Government should also seek to learn lessons from other EU Member States on ways in which environmental directives can be implemented in a pragmatic manner, while ensuring that their requirements are met. In future, when new environmental proposals about waste emerge from the Commission, the Government must engage with practitioners at the earliest possible stage to ensure that such proposals are practicable, enforceable and capable of implementation. (Paragraph 22)**

The Government's policy on the implementation of EU legislation was most recently set out in the "***Transposition guide: how to implement European directives effectively***" published by the Cabinet Office (Regulatory Impact Unit) in March 2005 and available at [www.cabinet-office.gov.uk/regulation/documents/europe/pdf/tpguide.pdf](http://www.cabinet-office.gov.uk/regulation/documents/europe/pdf/tpguide.pdf)



The Government is committed to the negotiation, transposition and implementation of EU waste legislation on this basis. The guide's key points include:-

- Policy makers and lawyers should work together from the start.
- Commit appropriate resources to handling European legislation.
- Consider at the earliest possible stage how a proposal will be implemented in the UK. Focus on practical as well as policy outcomes.
- Think about how best to shape a proposal, both before and after formal publication by the Commission.
- Use a Regulatory Impact Assessment to set out options, highlighting the risks attached to each and the related costs and benefits.
- Ensure appropriate co-ordination and consultation within government, including devolved administrations, agencies and local authorities.
- Ensure appropriate consultation with external stakeholders and encourage them to engage directly with the EU institutions.
- Avoid over-implementing EU directives, unless the circumstances are exceptional and the benefits demonstrably outweigh the costs.

### **Funding for enforcement**

**5. We note that the Government has given the Environment Agency increased funding, and welcome the recent announcement of additional targeted funding to tackle flytipping. But we remain unconvinced that the Agency has sufficient resources to match the increasing demands placed on it by new and forthcoming environmental legislation, including the implementation of the Landfill Directive and associated EU legislation relating to waste management. We regret that it has not been possible to deliver in full the planned increase in the Agency's Grant in Aid for 2004–05, and we would request that the Government re-examine with the Environment Agency the adequacy of the Agency's resources, so that a proper policing operation can be undertaken to ensure that all wastes, and in particular hazardous wastes, are properly and legally disposed of. (Paragraph 26)**

The Government recognises the pressures placed on the Environment Agency and agrees that the organisation must be adequately resourced.

The Agency's Environmental Protection funding needs were considered as part of the 2004 Spending Review and Defra's subsequent Resource Allocation Exercise. This both restored 2003/04 baselines (effectively allocating an additional £4m to the Agency over and above the extra £2m grant in aid provided in 2004/05) and provided for a further £5m for 2005/06, £10m for 2006/07 and £15m for 2007/08 in recognition of the environmental challenges to be addressed over the next three years and beyond.

On hazardous waste, the Environment Agency has been able to target its enforcement very effectively. As is reported below, the Agency has acted on

industry intelligence and followed up allegations of misdescription of hazardous waste. There are a number of investigations in hand that are likely to lead to enforcement action.

£2m of additional funding has also been given to the Agency through the Business Resource Efficiency and Waste (BREW) Programme to help the Agency work with businesses to improve their compliance with waste legislation.

**6. We agree with the Government that the Environment Agency should seek to reduce bureaucracy where possible, and any additional funding should be used in a way that allows the Agency to focus on what really matters, without undue “gold plating”. Defra can also help the Agency’s work in enforcing environmental regulation by working closely with it in a way that avoids duplication and which allows the Agency to issue guidance on legislation promptly. (Paragraph 28)**

The Government supports the Agency's efforts to reduce bureaucracy where possible, and continues to work closely with all its delivery partners to effectively enforce environmental regulation. However it is ultimately for the Environment Agency's Board to determine the allocation of grant-in-aid resources to meet priorities agreed with Government in its Corporate Plan.

Additional funding has been given to the Agency through the Business Resource Efficiency and Waste (BREW) Programme, which returns additional landfill tax receipts to business. Defra has allocated £2 million of this money each year for 2005-06, 2006-07 and 2007-08 to help the Agency work with businesses to improve their compliance with waste legislation. The Environment Agency's work will include targeted high profile campaigns to inform businesses of their responsibilities combined with increased enforcement activities to tackle fly-tipping. An important strand of this is for improved access to the Environment Agency's register of waste carriers via the internet making it simpler for businesses to check if those carriers taking their waste are legitimate or not. In particular, the Agency is committed to use this funding to apply both traditional and novel ways to tackle waste crime by focussing on the problem not just treating the symptoms. This, by necessity, is not a short term process, rather a medium to long term process but will achieve a sustainable reduction in waste crime over time.

The Government and the Environment Agency have also undertaken joint planning and work in the implementation of the Landfill and Hazardous Waste Directives through the joint Landfill and Hazardous Waste Implementation Programme (LHIP). This programme has enabled the effective and timely use of the respective resources of the Agency, Defra, DTI and indeed the waste industry that minimises overlap and ensures a co-ordinated and agreed approach.

## **Fly-tipping**

**7. We recommend that the Government consider introducing arrangements under which owners and occupiers of land on which waste is fly-tipped could have the waste removed by the appropriate authorities, or could be recompensed for the cost of removing the waste themselves, where it can be shown that they had taken all reasonable steps to prevent fly-tipping. This could be funded from the Landfill Tax, or from the proceeds of fines imposed on those found guilty of fly-tipping. The latter approach would help ensure the application of the 'polluter pays' principle. (Paragraph 29)**

The Government has recently passed the Clean Neighbourhoods and Environment Act 2005, which gained Royal Assent on 7 April. This included a range of measures to help deal with fly-tipping; including improvements to powers for local authorities and the Environment Agency to serve notices for fly-tipped waste to be cleared.

Where there is refuse or fly-tipping on public land, then, in many cases, the local authority will be required to clear it and bear the cost of removal under its duties to clear litter and refuse. However, clearing illegally dumped waste from privately owned land is more difficult. Neither the local authority nor the Environment Agency is under any legal obligation to remove the waste. To place a duty on the authorities to remove all waste from private land would potentially create a fly-tippers charter, which would encourage illegal dumping rather than tackle the problem. It would also involve huge costs and significantly reduce the freedom and flexibility of local authorities and the Environment Agency.

At a national level Defra and the Environment Agency meet quarterly with major stakeholders and landowning organisations through the National Fly-Tipping Prevention Group to explore ways of improving the system of controls over fly-tipping and to identify better ways of preventing and tackling the problem. This includes working with representatives of landowners to find ways of preventing as well as tackling fly-tipping on private land.

The Agency and local authorities can pursue a prosecution under Section 33 of the Environmental Protection Act 1990 where there is sufficient evidence. If the prosecution results in a conviction, measures in the Clean Neighbourhoods and Environment Act 2005 allow courts to award clean-up costs against the convicted person. The costs of clear up could also be paid to the landowner or occupier, if they were involved in clearing the waste.

It is also open to landowners to take civil proceedings against those responsible for fly-tipping on their land as a means of recovering their costs of dealing with the problem. Government does recognise that this course of action may only be practicable for larger landowners.

## **Hazardous waste**

**8. Beyond Waste presented us with a careful analysis of a great deal of official and industry-derived data, and concluded from this that nearly 700,000 tonnes of hazardous waste is unaccounted for following the co-disposal ban. We request that the Government, in its response to this report, produce its own assessment of the data which Beyond Waste has compiled, making clear whether it accepts these figures and, if so, what action it plans to take. (Paragraph 39)**

The Government does not accept the figures presented by Beyond Waste, and reinforces the Committee's comment that the evidence within the report is somewhat anecdotal and patchy. Estimated figures provided in the Beyond Waste report appear to be based on outdated, erroneous and incorrectly extrapolated data. For example, estimates of current inputs to landfill were based on one-quarter's returns from one operator and then annualised.

The Government and the Environment Agency meet regularly to discuss landfill and hazardous waste issues (Landfill and Hazardous Waste Implementation Programme (LHIP Board referred to above – paragraph 13). The Programme Board has been closely monitoring the level of illegal activity since the co-disposal ban. Whilst there have been some increases in reporting of the fly-tipping of asbestos, these are not considered to be related to a short fall disposal in capacity.

The Environment Agency has acted on industry intelligence and followed up allegations of mis-description of hazardous waste. There are a number of investigations in hand that are likely to lead to enforcement action. There is no evidence that 700,000 tonnes of waste has gone missing.

The Environment Agency's Special Waste Tracking System (SWaT) data over 5 year period shows an overall downward trend including disposal to landfill. This general downward trend is expected to continue, although any downward trend is expected to be offset by the application of the wider definition of hazardous waste in the data tracking system from July 2005.

Evidence suggests that arisings of hazardous waste have reduced since July 2004 for a number of legitimate reasons:

- The increase in the price of landfill post-July and consequent improvement in management of wastes, for example segregation of hazardous waste and non-hazardous wastes.
- More non-hazardous waste being consigned as special waste pre-July than required (because there was no cost incentive to segregate as all landfill was cheap)

More development sites were cleared pre-July to take advantage to cheap landfill before the co-disposal ban, with a consequent reduction post-July. Future brownfield sites are expected to look at alternative treatment of contaminated soil rather than “dig and dump”, which is welcome.

**9. Assuming these findings are valid, it seems to us that several conclusions follow: Enforcement is not regarded as being tough enough, and as a result waste is being disposed of illegally, for cost reasons. This means that a key financial lever – the increased cost of disposing of hazardous waste – is having a perverse effect, making it less rather than more likely that an environmentally appropriate disposal route will be used. The waste market will be distorted: waste producers and waste management companies correctly disposing of wastes will be put at a commercial disadvantage compared to less scrupulous competitors. If deliberate misdescription of wastes becomes established, greater quantities of more and more hazardous wastes will be diverted from legitimate routes, further distorting the market. Investment in new hazardous waste treatment plants could be jeopardised, as the industry will not be able to rely on a stream of wastes to be treated. The main key to avoiding these outcomes, at least in the short-term, is for enforcement of regulation to be more effective: the Environment Agency must focus on ending the practice of illegal co-disposal and make clear to Defra the resource implications of so doing. In the longer term, more must be done to reduce the amount of hazardous waste being produced in the first place. Particular attention should be focused on small and medium-sized enterprises. (Paragraph 40)**

The Government does not accept the findings on which this recommendation is based. But in any case, the Environment Agency has made its enforcement priorities very clear and has put these into practice. The Agency undertook over 1,800 inspections and audits between June and November 2004 focussing on hazardous waste including 74 cradle to grave audits of hazardous waste producers. All the merchant hazardous waste landfills have been the subject of detailed audit, and the Agency has undertaken other intelligence led activity. The Agency is reviewing its priorities to take account of the introduction of the Hazardous Waste Regulations and the waste acceptance criteria

Tackling mis-description and subsequent mishandling of hazardous waste will continue to be a priority. The requirements under the Hazardous Waste Regulations should greatly assist in identifying issues with waste producers and dealing with any problems at source.

Defra will continue to support the Environment Agency to further develop its capacity for tackling the more serious, organised aspects of these waste-crimes.

The problem of Small and Medium Enterprises in dealing with hazardous waste is recognised by the Government and we have supported a successful bid by the Environment Agency for European funding to set up the HAZRED project. This is a three year programme of work designed to deliver reductions in the volumes of hazardous waste produced by SME dominated business sectors. It illustrates how industry, trade associations and other UK regulators can work together to reduce the volumes of hazardous waste produced by SMEs.

**10. Much of the argument surrounding the technicalities of the Waste Acceptance Criteria (WAC) is complex, and we did not take sufficiently detailed evidence to reach a clear view about what exactly will happen in different industries on 16 July 2005. But we were disappointed to hear, once again, so many complaints from industry about lack of clarity and lateness in the issuing of guidance. We were pleased to hear that the UK pressed for proper clarity in the WAC, but we note again that the difficulties which have arisen because of the decision to agree the Directive without knowing what the details would be, were exacerbated by the length of time it took to agree precisely how the WAC should operate. We hope that the Minister is correct in stating that industry will be fully ready to manage the impact of the WAC, but, given the doubts cast on the Government's fairly sanguine view of the ending of co-disposal, we remain unconvinced. We were pleased to learn of the pragmatic decision by the Government and the Environment Agency to allow publication of the guidance in March, earlier than expected, although we note that this gives industry only four months to make their final arrangements. Nevertheless, we hope this will allow waste producers and the waste industry to make effective preparations for the introduction of the WAC. (Paragraph 46)**

Defra and the DTI have worked closely with the Environment Agency and industry to promote awareness of WAC largely through the LHIP Board and Communications Group (see Recommendation 3 above).

In addition, Government and the Environment Agency have instigated meetings with those waste producers who have indicated they will be unable to meet WAC on 16 July 2005. Discussions have focused on long-term changes to reduce the hazardous nature of the wastes produced by their processes and interim arrangements for the recovery and disposal of these waste streams. All problematic waste streams are being closely monitored by LHIP to ensure that issues do not emerge. The Agency is also facilitating meetings between waste producers and waste managers to help both parties identify solutions to any problems and to provide any regulatory clarity that may be necessary

In order to address the comments about the availability of guidance on Landfill and Hazardous Waste issues, the Government and the Agency produced two summary documents listing all the available guidance on the two issues with hyperlinks to enable individual guidance papers to be easily located on

Defra's or the Agency's websites. These summary documents were distributed widely, and show that much of the guidance on these two issues has been available for some time.

**11. The Government, together with the industry, should commission independent work to establish with complete clarity the reasons behind their differing perceptions relating to preparedness for the introduction of the WAC. The outcome of such a study would provide a valuable insight into how to avoid this type of problem occurring in the future. (Paragraph 47)**

The Government believes that the various initiatives Defra and others have been involved with has changed the perception about the preparedness for the introduction of WAC. Operators have been advising their customers of the requirements, and in the main have been confirming that there will be no problems.

For the longer term, the Environment Agency has set up a Landfill Regulation Group with representatives from industry including producers, Defra and DTI. Sub groups will monitor specific issues in the lead up to and beyond the implementation of the WAC.

The Environment Agency has carried out an awareness survey on the forthcoming hazardous legislation involving 1005 Small and medium Enterprises (SME's) in ten key sectors. The Environment Agency will publish the results shortly and will follow up with the waste industry and trade associations as it is clear these two are the preferred source of advice on waste issues for waste producers.

### **Diversion of waste from landfill**

**12. We agree with the Minister that the targets for diversion from landfill are challenging, but we are less optimistic that they can be achieved. While we welcome the hard work of many local authorities in meeting their targets for recycling and composting, we are not convinced that their achievement in meeting the 17 per cent target for recycling and composting – low by the standards of some other EU countries – is a wholly reliable indicator of likely success in meeting the targets under the Directive. We recommend that, in its response to our report, Defra set out, with as much statistical data as possible, how it thinks progress towards each of the Landfill Directive targets will be met. (Paragraph 59)**

The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 set each country of the UK annual limits on the amount of biodegradable municipal waste that can be sent to landfill for each year leading up to the first Landfill Directive target in 2009/10. For England, these targets are:



	<i>Maximum Amount (in tonnes)</i>
2005/06	15,200,000
2006/07	14,530,000
2007/08	13,640,000
2008/09	12,530,000

These limits and the 2005/06 recycling targets provide a framework for local authorities to make the necessary reductions in landfill. The Government does not intend to prescribe how these targets should be met. One advantage of the Landfill Allowance Trading Scheme is that it enables local authorities to decide how and when to make the necessary reductions in landfill, based on their local circumstances as they move towards 2010 targets and beyond. As part of the current review of *Waste Strategy 2000*, Defra is reviewing the recycling and composting targets. The review is taking into account the fact that there are already a number of policy levers designed to drive the management of waste up the hierarchy.

The Department does not currently have sufficient data to predict how the landfill directive targets will be met. Data sources are good for the amount of household waste currently diverted by local authorities, however future predictions of biodegradable municipal waste diversion are less clear as no centralised data source exists. Our response to Conclusion 2 outlines how we are working with the LGA, the Environment Agency and other local government stakeholders to get a clearer idea about how the targets are being met. The intention is to review this exercise annually, to allow the Government to closely monitor and evaluate progress towards the targets which will change over time as the Landfill Allowance Trading marketplace matures. The Project will also evaluate the likely infrastructure developments of individual local authorities allowing an assessment of how these will contribute to the attainment of the Landfill Directive Targets.

Progress so far has been encouraging; England has successfully met and exceeded its target to recycle and compost 17 per cent of household waste during 2003/04. Municipal Waste Management Survey data also show that in 2003/04 there was a reduction in the amount of municipal waste for the first time (a 1% decrease) and a reduction in household waste collection per person (a decrease on 10kg per person). For the second year running there has been a reduction in waste going to landfill (a decrease of 3% to 72%).

**13. We also note evidence about the confusion among many stakeholders over the exact definition of municipal waste, and are concerned about the possible impact this might have on assessing whether local authorities have achieved their targets and indeed on the operation of the Landfill Allowance Trading Scheme (LATS). We**

**recommend that Defra make clear, as quickly as possible, precisely what categories of waste will be allowed to count towards achievement of local authority targets and will be included in the LATS, and the criteria used in deciding them. (Paragraph 60)**

Defra is aware that there is uncertainty within local authorities about how to apply the definition of municipal waste. This also has an impact on the ability of the Environment Agency to fulfil its functions as the monitoring authority for the Landfill Allowance Trading Scheme (LATS). The Department is currently preparing guidance to provide clarification on the definition of municipal waste, which will allow authorities to identify which of their waste streams should be classed as municipal waste. The aim is to provide this clarification in time for the first quarter reporting of LATS. The guidance will be developed in partnership with the Environment Agency and other key stakeholders. It should be noted that, due to the nature of the definition of municipal waste in the Landfill Allowance and Trading Regulations (2004), it is not possible to produce a definitive list setting out precisely what categories of waste will be included, as the classification of municipal waste is based on both the nature or composition of the waste and how the waste is handled by the local authority.

#### **Developing new treatment technologies**

**14. We welcome the money the Government has allocated to increased research into new treatment technologies and to develop confidence in them. However, the Government is relying on the private sector to invest very significant sums in the future of waste treatment. We have already noted the importance of greater clarity and certainty in the legislative and regulatory environment. Without it, investor confidence is unlikely to be high enough to generate the level of commitment to new treatment facilities that is required. The Government should initiate an immediate study to determine if sufficient private investment is likely to be made in the appropriate technology required for new waste treatment facilities. (Paragraph 66)**

Wider policy levers such as increases in landfill tax and the Landfill Allowance Trading Scheme (LATS) will help to address some of the barriers to the take-up and development of new technologies, such as higher costs relative to landfill. The Government is also taking forward a £30m programme of advice on and development of new technologies, including pilot or demonstration projects for more innovative waste management practices, so that local authorities can have support for developing the most appropriate waste management systems for their area. In partnership with the Environment Agency we have also put in place a guide on up to 60 new waste treatment technologies through an internet database which highlights information on their costs and technical capabilities.

In the short to medium term, a new programme of work led by the Office of Government Commerce (OGC) should provide the opportunity to meet the

Committee's call for greater clarity with respect to future private sector capacity to deliver and invest in new infrastructure and technology. In particular, this will involve a strategic analysis of the municipal waste market by the end of 2005, as part of a programme of work to improve competition and capacity planning (partly funded and supported by Defra's Waste Implementation Programme). If it is not possible to progress this quickly and effectively in the context of the OGC's work, which is currently at the detailed planning stage, Defra will commission a separate study to meet the Committee's recommendation.

When considering the role of new technologies, it is particularly important to recognise that there are already a wide range of effective treatment technologies that have been developed and implemented to a greater or lesser extent in the UK, Europe and globally. Experience from the implementation of these applied technologies, including consideration of impacts, costs, local drivers that lead to their adoption and demonstration of effectiveness on a suitable scale, are all key factors.

**15. The Government sets great store by the PFI process in creating sufficient new treatment facilities to allow the country to meet its landfill diversion targets. We recommend that, if this route is to deliver all that the Government hopes, steps should be taken to ensure that maximum flexibility is built into the process. We also recommend that Defra provide funding to support the development of a national centre of waste procurement excellence, which would help ensure that local authorities are able to manage all their procurement as efficiently as possible. (Paragraph 70)**

The throughput of waste PFI projects to procurement has steadily increased in recent years, and there is clear evidence of a growing demand for PFI on the part of local authorities. This reflects the Department's current programme of work to improve delivery of waste PFI projects in conjunction with the Public Private Partnerships Programme (4ps) and HM Treasury. Whilst these improvements are welcome, the Government is now developing a strategy to consider in detail what can be done to address any remaining concerns over waste PFI projects. This will involve a clear articulation of how PFI projects can be driven forward and assist with local authority investment in value for money waste disposal facilities.

Efficient procurement is an important means of making best use of existing resources for waste management. By 2007-08 Defra has undertaken to help local authorities to deliver around £300 million worth of efficiency gains on waste services – mainly by more effective joint working, promoting best practice, and standardisation of procurement operations. This will centre on Defra's Waste Implementation Programme (WIP), which is already providing significant advice to local authorities on contract design and negotiation in conjunction with 4ps (the local government procurement expert). Building on this, Defra is now working closely with local government and the Regional Centres of Excellence, which can open up further ways of encouraging more

strategic and smarter procurement. The Centres are hosted by, run by, and act for local authorities, and will provide support to local authorities to achieve efficiencies in the procurement of construction and facilities management, for example.

### **Planning and public attitudes**

**16. We welcome the close working between the ODPM and Defra on ensuring that the planning system helps deliver the capacity for dealing with the country's waste. We are especially pleased that the draft planning guidance is aimed at increasing certainty for all parties involved. We hope that the revisions to the planning guidance will remove any structural problems within the planning process. But the planning system must balance the country's strategic need to manage the waste we produce with the right of the public to challenge planning proposals. The key to developing treatment facilities is not to curtail the public's right to challenge proposals, but to ensure they fully understand the need to cope with the country's waste streams, which they play a part in creating, and the details of proposals for particular treatment facilities. (Paragraph 74)**

**17. The Government has made it clear that decisions on planning applications for new waste treatment facilities are a matter for local planning authorities. But those authorities need to work within the Government's national strategic priorities for waste management. It would assist local authorities in managing the planning process if the Government could make clear its own attitude to different types of waste treatment facility, including incineration. (Paragraph 75)**

**18. We further recommend that, in its response to this report, the Government gives an assessment of how feasible it would be to combine some elements of the Environment Agency's permitting system into the planning process, as this could save duplication and thus reduce the time taken from conception to operation of new facilities.(Paragraph 76)**

**19. Public attitudes to waste treatment are fundamental to the successful achievement of the landfill diversion targets, given that waste minimisation and reuse cannot in themselves ensure that the targets are reached. Even the more "acceptable" treatments of waste, such as recycling and recovery of materials, will require the development of more facilities. We conclude that the public has to recognise that, while society continues to produce more waste, they will have to accept that more and different waste treatment methods will be required. Central to the public accepting this will be the Government's**

**role to play in ensuring that the public has confidence in the systems put in place to treat waste. (Paragraph 80)**

The Government agrees that moving to more sustainable waste management requires a major change in public attitudes, both to the amount of waste produced in the first place and to the new waste facilities needed to utilise waste as a resource and reduce reliance on landfill. The new investment required is substantial and this has to pass through the planning system. The planning process has in many cases worked smoothly and there are notable examples of where local planning authorities and the waste management industry have worked together constructively and effectively. Unacceptable proposals out-of-line with up-to-date plans should not expect to gain a favourable response from local planning authorities, but the Government accepts that some investment has been delayed, or even deterred, by ill-founded opposition to waste management proposals.

Together with local authorities, we are working hard to make planning in general faster, fairer and more flexible. The Office of the Deputy Prime Minister recently consulted on new planning policy on waste management (Draft Planning Policy Statement (PPS) 10: *Planning for Sustainable Waste Management*. This will update Planning Policy Guidance Note 10 (PPG10)). The aim is to ensure clarity on what is required regionally and locally to ensure that decisions are made at the most appropriate level and at the right time. Community involvement is an essential part of the planning system generally and waste planning specifically. There will therefore be more and earlier opportunities for local communities to have effective influence over the planning of waste management facilities. This will be when it counts, in the preparation of plans and strategies, and not as opposition of last resort to submitted planning applications. Planning applications that cut across up-to-date development plans prepared in consultation with local communities give rise to a justifiable sense of frustration. We have therefore emphasised the need for the waste industry to work alongside local communities, in support of planning authorities and in ways consistent with sustainable development.

To help the planning for waste management process, Defra consulted, alongside the consultation on PPS10, on changes to the decision making principles set out in Waste Strategy 2000 and on the provision of periodic advice from Government to inform the preparation of Regional Spatial Strategies. One area suggested for possible advice was assumptions and methodologies for forecasting the requirements for different types of treatment capacity (eg landfill, and other non recycling capacity). Responses to this consultation are currently being considered.

The Government considers that where waste management facilities require separate consents, from the local planning authority on land use matters and from the Environment Agency on pollution control concerns, such developments can generally be handled more efficiently if the pollution control permit and planning permission are sought at the same time. 'Parallel tracking' ensures that good use is made of expertise and information and both the developer and local community benefit from greater certainty.

Government policy, therefore, is to encourage waste planning and pollution control authorities to work closely to ensure integrated and timely decisions under the complementary regimes and that this can be assisted by applicants preparing and submitting planning and pollution control applications in parallel.

We are aware of concerns in the industry about the risk and potential expenditure of requiring 'parallel tracking'. It is likely these concerns would also apply to incorporating elements of the Environment Agency's permitting system into the planning process. There may, nevertheless, be benefits in closer integration of some aspects of the permitting regimes and we will bear this in mind in the programme of modernising environmental permitting being taken forward by Defra and the Environment Agency and in the work in the Office of the Deputy Prime Minister on the unification of consent regimes. These projects are both concerned with securing efficiencies through progressively putting different regulatory streams on to a common footing, supported by more streamlined systems.

The Government is tackling the misconceptions about waste management that can frame public attitudes. For example, public concern about the effect on their health of waste management, in particular from incineration, can be a significant factor in local opposition. The "Review of Environmental and Health Effects of Waste Management: Municipal Solid Waste and Similar Wastes", published by Defra in 2004, shows much of this concern to be out-of-date and exaggerated. The report's conclusion was that, on the evidence from studies so far, the treatment of municipal solid waste has at most a minor effect on health particularly when compared with other health risks associated with ordinary day-to-day living.

### **Incineration and cement kilns**

**20. We have noted the evidence for and against the use of incineration as a way of treating waste. We conclude that it is a valid method of treating waste, insofar as it reduces dependence on landfill, on the condition that it recovers energy from the waste incinerated, and assuming independent scientific research confirms that incineration is not more harmful to health than other forms of waste treatment. In this context we note the apparently reassuring conclusions of the independent review of the health impacts of waste treatment, although we look forward to the outcome of the further research commissioned by the Government. (Paragraph 93)**

**21. We do not believe that incineration should be seen by the Government as a panacea for meeting the landfill targets, but only as one part of a wider strategy. We recommend that, in its response to this report, the Government give a clear indication of its attitude towards incineration. It should also define the role it expects incineration to play,**

**and provide a definitive statement on the public safety issues raised by the use of this waste disposal technique. (Paragraph 93)**

Following the publication of the 'Review of Environmental and Health Effects of Waste Management: Municipal Solid Waste and Similar Wastes' in May 2004, Defra intends to commission a follow up study which will extend this review to cover the environmental and health effects of non-municipal wastes. Waste Strategy 2000 sets out the Government's aim to reduce the amount of waste produced and recover value from waste in line with the waste hierarchy. The hierarchy identifies incineration with energy recovery as a preferable waste management option to landfill, but less desirable than waste minimisation, reuse or recycling. We agree, however it is important to increase general understanding of the practical, cost and environmental limitations on minimisation, re-use and recycling.

Government recognises incineration with energy recovery as a sustainable waste management option and supports the need for additional energy recovery from waste in the coming decades. This is an option for treating residual waste after high levels of recycling and to contribute towards the diversion of biodegradable municipal waste from landfill required by the EU Landfill Directive. Incineration with energy recovery is also particularly suitable for the disposal of certain wastes that cannot be safely or practically re-used or recycled.

Emissions from incinerators are regulated to a very high standard through the Waste Incineration Directive (WID) to protect health and the environment. The WID applies stringent requirements to any incineration or other thermal treatment of waste, either on its own or if co-incinerated along with other material. No convincing evidence of negative health effects from WID-compliant plants has been produced to date. Defra's recent study, 'Review of the Environmental and Health Effects of Waste Management', states that: 'risks to human health from incineration are small in comparison with other known risks.'

**22. It is clear from the written evidence we received that the incineration of hazardous waste in cement kilns is of particular concern. Although both the Minister and the Environment Agency have stressed that the changes to the Substitute Fuels Protocol will not allow any increase in harmful emissions to the air, those opposed to the practice are obviously not convinced. We were also concerned about criticisms of the consultation process undertaken by the Agency. We conclude that the incineration of hazardous waste in cement kilns may be a legitimate treatment route, provided that such facilities meet the same standards as incinerators. The Environment Agency must not allow any "sham" treatment of waste to take place – that is, the blending of wastes with no fuel value with other wastes with a fuel value to avoid having to pay for disposal in a merchant waste incinerator. (Paragraph 95)**



The controls on the co-incineration of waste in cement and lime installations under the Waste Framework Directive and WID ensure that the appropriate legal and technical controls are imposed and that adequate safeguards are in place to protect human health and the environment.

Although the revised Substitute Fuels Protocol (the "SFP") does not specify a minimum calorific value for substitute fuels, operators of cement and lime kilns must demonstrate to the Agency that any waste proposed for use as substitute fuels has a sufficiently high heat content to contribute to the energy requirements of the process. The protocol also states that the Agency will not allow the blending of waste streams that do not contribute to the performance of waste as a fuel. The criteria used by the Environment Agency to determine if this is the case are based on ECJ judgments ensuring that wastes will not be disposed or undergo 'sham' recovery in cement kilns.

The requirements of the WID must be met fully by both incineration and co-incineration plant by 28 December this year. They, are designed to ensure that all plant meet similar, high environmental standards

**23. Given the concerns raised by witnesses to our inquiry, we also expect the Agency and cement companies to undertake the fullest possible consultation with local residents about changes to the nature of wastes being co-incinerated, and for the views of local residents to be adequately addressed before any Agency permit to co-incinerate is issued. (Paragraph 96)**

The Environment Agency is committed to engage with the public where there are proposals that raise genuine local concerns. In the annexes of the SFP, the Environment Agency clearly sets out its arrangements for extended public consultation over and above that required by the statutory provisions of the PPC Regulations. All of the data from trials are available on the public registers held by the Environment Agency and local authorities in whose area the kilns are located. When the Environment Agency consults on an application to burn substitute fuels it publishes a decision document which sets out the rationale for its decision.

### **Resources for local authorities**

**24. Like the LGA, we welcome the fact that funding for waste management through the Environmental Protection and Cultural Services block of the Revenue Support Grant has increased. But the evidence we heard has not convinced us that the increase will be sufficient to meet the increasing demands placed on local authorities. We are aware that it is up to local authorities to determine how their funding from central government is spent, and it is open to any individual authority to divert spending to waste away from other services. There are always hard choices to be made in deciding how to**

**divide up the cake, and it is clear that additional spending on waste would not be regarded as a priority by many local residents. This reflects the low profile of waste, which we have already noted. We also note that increases in council tax to provide more funding for recycling and other forms of treatment might have a disproportionate impact on less well-off households. (Paragraph 102)**

The Committee is correct to note that it is the responsibility of individual local authorities to determine how central government funding is spent to meet local and national priorities. Government expects local authorities to deliver effective public services without imposing large increases in council tax.

However, to help ensure that local authorities focus on delivery of sustainable waste management services, Government set each one a Statutory Performance Standard for recycling and composting for 2003/04 and 2005/06. Furthermore, the flexibilities allowing purchase and sale, banking and borrowing of landfill allowances under the Landfill Allowance Trading Scheme will enable local authorities to fulfil their obligations under the Landfill Directive in the most cost-effective way. The additional cost of meeting these obligations was taken into account in Spending Reviews 2002 and 2004.

Defra also enables investment in waste management through PFI credits (£355 million between 2003/04 and 2005/06, with a further £535 million available in 2006/07 and 2007/08), the Waste Minimisation and Recycling Fund (£275m over the four years from 2002/03 to 2005/06) and now its successor the Waste Performance and Efficiency Grant (£255m to local authorities between 2005/06 and 2007/08, plus £5m invested in a pilot scheme for household incentives in 2005/06).

To provide further encouragement, Defra works with the Office of the Deputy Prime Minister, Government Offices and local authorities to ensure that local authorities consider the potential to include a sustainable waste management target in their Local Public Service Agreement; we are now working to develop a similar approach to Local Area Agreements.

### **The Landfill Tax**

**25. We once again recommend that the Government raise the level of the Landfill Tax to the £35 per tonne level as soon as possible. Not only would this provide a significantly increased driver for change, but it would also provide additional funding for programmes designed to reduce the waste streams. We welcome the funding that has already been made available from the proceeds of the tax, and recommend that the Government consider whether, if the level of the tax were increased, more could be allocated to the Environment Agency for its enforcement work. Without effective enforcement, as we have already noted, financial drivers such as the Landfill Tax could have a perverse effect on behaviour. (Paragraph 110)**

The Government has committed to increase the standard rate of landfill tax (for active waste) by a minimum of £3 per tonne each year from 2005-06, to a medium to long term rate of £35 per tonne. From 1 April 2005, the standard rate of landfill tax is £18 per tonne. The actual increases together with the knowledge of the future rate of tax is sending a strong signal. This will change behaviour while allowing business time to adjust and for the necessary investment in alternative waste treatment routes to take place.

By setting out its long-term policy on rates, the Government has set a clear framework. It can take several years to put in place the appropriate diversion facilities to manage waste sustainably. An immediate increase in the Landfill Tax to £35 per tonne could simply increase costs to business and local authorities without any earlier change in behaviour.

Since the Government announced the increases in the standard rate of landfill tax, the volume of active waste disposed to landfill has fallen by 4 per cent. The Government will continue to monitor the effect of the tax, in conjunction with other measures, on the diversion of waste from landfill and the investment in alternative waste management capacity.

The Government has established the Business Resource Efficiency and Waste (BREW) programme as the means of returning the revenue to business to assist it in tackling waste and increasing its resource efficiency. Projects funded in the first year, starting April 2005, will be delivered through a number of established programmes and organisations. These include Envirowise, the Waste and Resources Action Programme (WRAP), the Market Transformation Programme, Carbon Trust, the National Industrial Symbiosis Programme (NISP) and work of the Environment Agency to help ensure that wastes are managed lawfully. The Government is also consulting stakeholders on the potential to introduce an enhanced capital allowance scheme for waste.

### **The Landfill Allowance Trading Scheme**

**26. The Landfill Allowance Trading Scheme has yet to come into operation and we cannot therefore comment at this stage on how it will work in practice. We recognise that this is an innovative and potentially useful way to encourage local authorities to divert waste away from landfill and that, in theory, it would reward those authorities which are effective at diverting landfill while providing significant incentives, through the use of financial penalties, to the less well-performing authorities. However, we are concerned by the comments of the Local Government Association that, in practice, the market operated under the scheme will not be perfect, in particular because of the lack of access by councils to accurate market intelligence. In its response to this report, Defra should set out how it will address such concerns. (Paragraph 119)**

The best source of information on the availability of allowances will be the LATS Bulletin Board (available to waste disposal authority representatives on

the LATS Register), where authorities can advertise allowances they are willing to sell or indicate that they wish to purchase allowances. To date (May 2005) a number of authorities are actively advertising Landfill Allowances available for trading on the LATS Register. The LATS Register also includes a transfer log, where authorities can view details of historic trades, including the number of allowances traded and the price paid. Similar information may also be available from other sources, such as the Local Government Association's own bulletin board or brokers, if waste disposal authorities choose to provide this information to them.

However, the Government recognises that a study of public sector capacity would be useful to build wider knowledge about the scheme and as referred to in the response to Conclusion 2 is currently working closely with the LGA and the Environment Agency to take this forward.

### **Variable charging and incentives for households**

**27. We welcome the Government's support for schemes that would allow local authorities to provide incentives to households to minimise, separate and recycle their waste, and would encourage local authorities to develop schemes along these lines. Such an approach would contribute to meeting the landfill diversion targets, as well as making the general public more aware of the impact of waste, the real cost of its treatment and their responsibility for helping tackle the growing municipal waste stream. Discretion about whether to introduce such schemes should be left with local authorities, who in turn should ensure that their local communities are fully engaged with the process. We believe that priority should be given within such schemes to incentives to minimise the overall amount of waste put out for disposal. (Paragraph 125)**

Local authorities already have powers to run incentive schemes if they wish – indeed, recent research for Defra, the results of which are available on Defra's website, show that at least half of English local authorities have run or are running some form of incentive scheme.

However the research also indicated that incentive schemes are usually run on an *ad hoc* basis and not integrated with an area's long-term strategy for municipal waste management. The very limited monitoring and evaluation undertaken on such schemes means we have little evidence of their efficacy in helping to drive up recycling and reduce waste.

The Government wrote to all local authorities on 30 March 2005 encouraging them take part in the Government's household incentives pilot programme. The aim of the pilot study is to evaluate a comprehensive range of household incentive schemes to provide an evidence base for future policy development in this area, and guidance to local authorities on best practice. As part of the pilot we will aim to ensure that we support a number of schemes that incentivise householders to minimise the amount of waste that they put out for disposal.

The decision on whether to take part in the pilot scheme rests with local authorities. One of the criteria against which we will judge local authorities' applications for support is the extent to which they can demonstrate that the proposed scheme fits within an existing strategy for managing waste more sustainably and actively engaging their local communities.

**28. We were also interested to hear the Minister's agreement, in principle, to the idea of variable charging for household waste. This would be a significant step further than schemes that reward households. Such schemes would be a further encouragement to households to tackle the waste stream, but care would need to be taken to ensure that variable charging did not have an unfair impact, especially on low-income families. Adequate facilities for recycling and composting would have to be available before this kind of charging came into operation. In addition, charging could create an incentive to dispose of waste illegally, to avoid paying the charge. This reinforces our earlier conclusions that effective policing of fly-tipping and other illegal waste disposal would be necessary for such financial instruments to work properly. (Paragraph 126)**

Government notes the Committee's comments on the potential risks attached to variable charging for household waste. Currently, It has no plans to introduce such a policy. However the Committee is correct to identify that any variable charging scheme would need to be designed in a way that avoided a disproportionate impact on low-income households, and would need to be predicated on adequate provision of recycling and composting facilities. The Government also agrees that effective enforcement measures would need to be put in place. Evidence from schemes in operation elsewhere in Europe and further afield suggests that these risks can be managed effectively.













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