

**EXPLANATORY MEMORANDUM TO
THE JOINT WASTE AUTHORITIES (PROPOSALS) REGULATIONS**

2009 No. [105]

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

2. Purpose of the instrument

2.1 Powers to establish Joint Waste Authorities (JWAs) were included in the Local Government and Public Involvement in Health Act 2007 (the Act)¹. Under these powers local waste authorities that wish to work together to discharge their waste functions can submit a proposal requesting the establishment of a statutory JWA. Under section 205(5) of the Act, the Secretary of State may make Regulations to make provisions as to matters to be included in a proposal for a JWA. These Regulations set out those matters that local waste authorities must include in a proposal for the establishment of a JWA as well as information that must accompany that proposal.

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

3.1 None.

4. Legislative Background

4.1 These Regulations are made in exercise of the power in section 205(5) and (6) and section 240(10) of the Act. Part 11 (sections 205 to 211) of the Act allows two or more local waste authorities to apply to the Secretary of State to establish a JWA to discharge some, or all, of their waste functions (waste collection, waste disposal and/or street cleansing).

4.2 Part 11 allows local waste authorities that wish to work together to discharge their waste functions to submit a proposal to the Secretary of State requesting the establishment of a JWA. Groups of authorities will be able to voluntarily request the creation of a JWA in order to enable stronger and legally recognised joint working on waste. A JWA would take over the powers and responsibilities of its constituent authorities relating to one or more of its waste functions: waste disposal, waste collection, and/or street cleansing. The respective roles and responsibilities for waste collection authorities (WCAs) and waste disposal authorities (WDAs) in relation to waste management services are set out in the Environmental Protection Act 1990. It will be for

¹ http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070028_en.pdf

groups of authorities to propose exactly which services a JWA should cover. Government will work with authorities to determine the structure, constitution and funding of their partnerships.

4.3 Section 206 of the Act requires local waste authorities to take reasonable steps to consult local residents and other interested parties on any draft joint waste authority proposals before submission to the Secretary of State. Section 207 of the Act allows the Secretary of State to implement successful proposals by order (secondary legislation) with or without modifications. Section 207(5) requires that joint waste authorities can only be dissolved where all the constituent authorities agree and request the Secretary of State to dissolve it, or where the Secretary of State considers it necessary to do so. The Secretary of State also has the power under section 207(6) to exclude functions from a joint waste authority once it is operational. Under section 205(5) of the Act the Secretary of State may make Regulations to make provisions as to matters to be included in a proposal and information that must accompany a proposal. Sections 209 and Schedule 13 of the Act makes consequential amendments to other legislation in order to facilitate joint waste authorities.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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 Joint working between local waste authorities is becoming increasingly important as a means of delivering quality services to residents and meeting the UK's Landfill Directive obligations at affordable cost. Some smaller waste disposal authorities can find it difficult to procure new waste facilities needed to divert waste from landfill cost-effectively on their own, and it is becoming common for authorities to work with neighbours to procure new facilities. Joint working is particularly important in two-tier areas, where responsibilities for waste collection and waste disposal are split between different authorities. As the UK moves to new, more sustainable ways of managing waste it is becoming increasingly important to integrate collection and disposal. Such integration has the potential to create efficiencies.

7.2 The cost of waste disposal is cited as one of the top pressures on council tax, and therefore realising efficiencies is a priority. In England, partnership working is one of the ways local authorities can realise these efficiency savings.

7.3 In England the separation of decision making powers and funding streams in two-tier areas can significantly inhibit the efficiency of the waste management function. The

Local Government White Paper² highlighted the need for local authorities to work together, particularly in two-tier areas, in order to deliver improved accountability and leadership, increased efficiency and improved outcomes.

7.4 A Joint Working in Waste project, run through the Innovation Forum by a group of excellent-rated authorities (in the Comprehensive Performance Assessment), was set up in December 2004 to identify and propose solutions to barriers to joint working between local authorities. The Innovation Forum's final report³, published in July 2006, highlighted the many benefits of joint working on waste. It called for legislative changes to make partnership working easier.

7.5 One of the key barriers to joint working identified by the Innovation Forum report was the limited legal basis for joint working arrangements. This can create difficulties when authorities are dealing with the private sector (ie. private waste contractors and financial institutions). A mechanism which allows authorities to enter into a legal commitment to work together with a statutory basis gives increased certainty to potential lenders and contractors.

7.6 In response to the Innovation Forum Report, and other requests from local government, powers to establish JWAs were included in Part 11 of the Act.

7.7 Any local waste authority in England can become part of a JWA. It is envisaged that most JWAs will assume waste collection and disposal functions and possibly street cleansing. The whole waste function will be transferred, so a JWA cannot be established merely as an authority to work jointly on strategic issues. JWAs will have operational functions; other partnership models can be used for joint working solely on strategic issues.

7.8 By submitting a proposal to the Secretary of State groups of authorities will be able to request voluntarily the creation of a JWA. The Joint Waste Authorities (Proposals) Regulations 2008 set out the matters which such proposals must contain, and also information which must accompany a proposal.

8. Consultation

8.1 A formal 12-week written consultation on the draft Regulations and also on draft guidance to accompany the Regulations took place from 17 March 2008 to 9 June 2008. It asked for views on what proposals should seek to achieve, the key issues of how JWAs will work and criteria for assessment of proposals. During this period discussions were also held with organisations representing local authorities. The consultation demonstrated broad support for the coverage and content of the draft Regulations and the draft guidance. Some key issues noted in responses were:

² <http://www.communities.gov.uk/publications/localgovernment/strongprosperous>

³ <http://www.idea.gov.uk/idk/aio/4821783>

- strong views were expressed in favour of local flexibility to decide on voting procedures in a joint waste authority;
- most of the respondents supported the proposal to include a requirement that proposals for collection-only joint waste authorities in two-tier areas must justify why the involvement of the waste disposal authority is not appropriate and indicate what engagement of the WDA there has been;
- most of the respondents supported the view that the Regulations should require evidence of political endorsement for the decision to establish a joint waste authority within each constituent local authority.

8.2 These views have been taken into account in the final version of the Regulations. Other issues will be reflected in the accompanying guidance document. A fuller explanation of the consultation process and responses received is provided in the *Summary of Responses to the Consultation* which is available on the Defra website at <http://www.defra.gov.uk/corporate/consult/jwa/government-response.pdf>.

9. Guidance

9.1 Draft guidance has been prepared to accompany the Regulations and was consulted on in parallel to the draft Regulations. This guidance is being amended following consultation and includes:

- statutory guidance on what a proposal should seek to achieve and matters authorities must take into account when making a proposal for a joint waste authority; and
- guidance on the provisions of the Act, the draft Regulations and general issues relating to proposals for joint waste authorities.

9.2 The guidance is aimed at local authorities who wish to make a proposal for joint waste authority status. The final version of the guidance will be published on commencement of the Regulations.

10. Impact

10.1 A Regulatory Impact Assessment in relation to provisions on joint waste authorities was produced in connection with the Act.

10.2 No impact on the private or voluntary sector was foreseen. Details of the impacts for the public sector are provided in that Impact Assessment, which is available on the CLG website⁴.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

⁴ www.communities.gov.uk/publications/localgovernment/healthact

12.1 The success criteria is that authorities understand and know what is required of them with regard to making a JWA proposal and when they make such a proposal they provide all appropriate information.

12.2 There are no current plans to monitor or review the legislation.

13. Contact

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