Clean Neighbourhoods and Environment Act 2005

Interim Guidance for Measures commenced on 18 October 2005
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Introduction


1.2 This document provides interim guidance on the measures contained within the Act that commence on 18 October 2005, and relate to abandoned vehicles, waste divestment provisions and fly-tipping. It sets out in simple terms the aim of the measures and provides a commentary on each section. Where applicable it also sets out related legislation that could be used to cover similar issues.

Who is the guidance for?

1.3 This guidance is intended for use primarily by enforcement authorities, such as local authorities. However, it is not restricted to their use and may be an informative document for those bodies with an interest in the legislation.

1.4 We have developed draft regulations and guidance on the majority of the remaining powers in the Act, which need to be commenced. The draft regulations and guidance (including this interim guidance) are currently out to consultation. Further information on the consultation can be found at http://www.defra.gov.uk/corporate/consult/clean-neighbourhood05/index.htm

1.5 It is intended that most of the remaining measures in the Act will be commenced by Spring 2006. This guidance and what is produced for the remaining measures of the Act will form part of comprehensive guidance that will be issued next year.

Enquiries

1.6 Any enquiries about the content of this Guidance should be made to:

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Abandoned Vehicles (Part 2 of the Act)

2.1 This part provides guidance on the following legislation, as amended by sections 11-17 of the Clean Neighbourhoods and Environment Act 2005:

- Refuse Disposal (Amenity) Act 1978 – Sections 2 – 5;
- Road Traffic Regulation Act 1984 – Sections 99 – 103;
- Removal and Disposal of Vehicles Regulations 1986 (SI 1986/183)

2.2 It is intended as a guide for local authorities to use when exercising their duties regarding abandoned vehicles. It is not a replacement for that legislation and should be read in conjunction with the legislation and explanatory notes – some of which is accessible through the following links.

www.opsi.gov.uk/si/si1989/Uksi_19890744_en_1.htm

2.3 Legislation pre-dating 1988 should be ordered through Her Majesty's Stationary Office at www.hmso.gov.uk

2.4 This guidance is issued by the Secretary of State and under section 4A of the Refuse Disposal (Amenity) Act 1978 and subsections (4) and (5) of section 103 of the Road Traffic Regulations Act 1984, local authorities must have regard to it when exercising their functions under sections 3 and 4 of the Refuse Disposal (Amenity) Act 1978 and sections 99 to 103 of the Road Traffic Regulation Act 1984.

2.5 Sections 11-13 and 15-17 of the Clean Neighbourhoods and Environment Act 2005 on abandoned vehicles will be commenced on the 18th October 2005. Please note that Fixed Penalty Notices for abandonment of vehicles will only be available to use from April 2006. Separate guidance will be issued on fixed penalty notices in due course.

2.6 For ease of reference the legislation is covered under the following headings:

1) The offence of abandonment
2) The removal and custody of abandoned vehicles
3) The disposal of abandoned vehicles
4) Recovery of costs
5) Powers of entry
The Offence of Abandonment

2.7 This covers Section 2 of the Refuse Disposal (Amenity) Act 1978 (RDAA).

2.8 It is a criminal offence to abandon a motor vehicle or anything that has formed part of a motor vehicle on any land in the open air or on any other land forming part of a highway. It is also an offence to abandon anything else that has been brought on to land for the purposes of abandoning it.

2.9 A person found guilty of such an offence may be punished on summary conviction with a fine not exceeding level 4 on the standard scale (currently £2500), or a term not exceeding 3 months imprisonment (possibly to be raised to 51 weeks), or both. The Clean Neighbourhoods and Environment Act 2005 inserts a new section 2A into the RDAA, which allows an authorised officer of a local authority to issue a fixed penalty notice as an alternative to prosecution for the offence. However, this will not be available to use until April 2006.

Removal and custody of abandoned vehicles


Note: As well as dealing with abandoned vehicles, the Road Traffic Regulations Act 1984 sets out powers to remove vehicles that are broken down or causing an obstruction. However, local authorities only have powers to remove abandoned vehicles. Those that are broken down or causing an obstruction should be removed by the Police (or - following the Traffic Management Act 2004 - by Highways Authority Traffic Officers).

The duty

2.11 Where it appears to a local authority that a vehicle in their area is abandoned, it will be their duty to remove the vehicle. This duty applies to all land in the open air or any land forming part of a highway. However, in respect of such vehicles that are not on the carriageway, this duty does not apply where the costs of removing it to the nearest convenient carriageway is unreasonably high.

Note: Best Value Performance Indicator 218 has required local authorities to record, since April 2005, the number of abandoned vehicles investigated within 24 hours of being reported, and the number removed within 24 hours of the authority being legally entitled to do so. The changes to the abandoned vehicle

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1 In this Act, ‘motor vehicle’ means –
‘a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer’ (s.11(1)). (Note: This includes Caravans).
legislation will mean that this indicator will be modified slightly to reflect the removal of the 24 hour notice. Revised guidance for this indicator can be found using the below link:

www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplatе/odpm_index.hcst?n=2076&l=3

Definition of ‘abandoned’

2.12 There is no legal definition of ‘abandoned’ and this guidance does not seek to create one. Local authority officers have the freedom to use their discretion when making decisions on abandonment.

2.13 However, the following characteristics are generally common to abandoned vehicles and one or a combination of the following could assist a local authority officer in making a decision on abandonment.

(a) Untaxed, with
(b) No current vehicle keeper on the Driver and Vehicle Licensing Agency’s (DVLA) record
(c) Stationary for a significant amount of time
(d) Significantly damaged, run down or unroadworthy
(e) Burned out
(f) Lacking one or more of its number plates
(g) Containing of waste

Category (d) could include vehicles with flat tyres, wheels removed or broken windows.

This is not an exhaustive list and a vehicle would not have to be displaying the full list to be abandoned.

2.14 However, a vehicle should not be considered abandoned solely on the grounds that it is not displaying a valid tax disc. Local authorities should use the DVLA’s free on-line link, for local authorities to check keepership details and vehicle taxation status prior to taking action. This is available 24 hours a day, 365 days a year. DVLA can check vehicle details using either the registration number or the vehicle identity number (VIN).

The exception to the duty

2.15 A local authority shall not be required to remove an abandoned vehicle if the cost of removal to the nearest ‘carriageway’ would be unreasonably high.

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2 ‘carriageway’ means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles (Highways Act 1980, s.329(1)).
2.16 It is for the local authority to decide whether the costs of removing a vehicle to the nearest carriageway (not to its final destination) are unreasonably high. In such cases it is justifiable to ask the land owner or occupier to contribute towards the cost of removing the vehicle to the nearest carriageway – the local authority picking up the remainder of the cost. However, such circumstances should rarely occur and only when a vehicle has been abandoned on remote or hard to access areas, or where special and/or additional machinery is needed to aid removal. Removal of vehicles abandoned on hard surfaced residential areas (or associated grass verges) without the permission of the occupier should not be charged for and the occupier would have grounds to challenge any charge in the courts unless the authority could show that the costs it will incur are significantly higher than the cost of removal from the carriageway alone.

Notice requirements

2.17 Where a vehicle, which is deemed to be abandoned is on land that is occupied, the local authority must give the occupier 15 days notice that they propose to remove the vehicle. The local authority is not entitled to remove the vehicle if the occupier objects to the proposal within that period. However, if the occupier gives the local authority permission to remove the vehicle (e.g. if the vehicle was abandoned without their consent), the 15 day notice automatically lapses and the vehicle can be removed immediately.

2.18 The legislation does not define the term ‘occupier’. The general rule is that if a term is not defined in the statute in which it is used, it is given its natural meaning. This will ultimately be for the local authority officer to decide. However the term ‘occupier’ has been previously defined as:

(i) The tenant or licensee.
(ii) Anyone who has legal possession of and control over the premises.

Note: Full details of how this notice should be served and how a person can object can be found in regulations 8 and 9 of, and Schedule 2 to, the Removal and Disposal of Vehicles Regulations 1986. The regulations do not require the notice to be affixed to the vehicle and doing so can often lead to anti social behaviour and arson.

2.19 Under a change introduced by the Clean Neighbourhoods and Environment Act, a 15 day notice is not required where a vehicle is abandoned on a ‘road’ (within the meaning of Section 142 the Road Traffic Regulation Act 1984³).

Note: Whether a piece of land is a road or not is a matter of fact. The main feature of a road is that the general public has a right to use it as a means of

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³ ‘Road’ means –
‘any length of highway or of any other road to which the public has access and includes bridges over which a road passes’. (s.142(1) Road Traffic Regulation Act 1984 ).
getting from A to B. The definition includes all highways (all the land to which the public has a right to pass along for the purpose of legitimate travelling) and includes both the carriageway and footpath and also access roads through estates that are owned by organisations such as housing associations or by the residents who live there. A car park for example would not normally come within the definition of a road as its function is to enable people to leave their vehicle.

2.20 The Clean Neighbourhoods and Environment Act 2005 has removed the requirement to affix a 24 hour notice to a vehicle that is deemed fit for destruction. All abandoned vehicles can now be removed immediately.

Manner and period during which occupier of land may object

2.21 The period with which the occupier can object is **15 days** from the day in which a notice is served on him.

Custody procedures

2.22 Local authorities can remove vehicles by towing, driving or by any other means necessary. A local authority authorised officer can also take any measures he may think necessary to enable him to remove or move it.

2.23 Local authorities shall deliver abandoned vehicles to the relevant disposal authorities in accordance with arrangements as may be agreed between the two and where vehicles are in the custody of a local authority, should take all steps that are reasonably necessary for the safe custody of that vehicle.

2.24 No action can be taken against a local authority for damage resulting from not carrying out its abandoned vehicle duties. However, if the Secretary of State, after holding a local inquiry, is satisfied that the local authority has failed to carry out the duty, he may require the authority to take steps to carry that duty out.

Disposal of abandoned vehicles

2.25 This covers section 4 of the Refuse Disposal (Amenity) Act 1978, sections 100 and 101 of the Road Traffic Regulations Act 1984 and part III of the Removal and Disposal of Vehicles Regulations 1986, as amended, and includes steps required to trace the owner of vehicles.

2.26 For certain types of abandoned vehicles, local authorities will be bound to take steps to trace the owner of a vehicle and, if successful, give them **7 days written notice** that the authority intends to dispose of the vehicle if it is not collected within that time. If the owner is traced, the local authority has the option (from April 2006) of serving a fixed penalty as an alternative to prosecution.

2.27 On satisfying the local authority of ownership, the owner of a vehicle can remove the vehicle from custody after paying sums relating to removal and
storage owed to the authority. Up to a year after a vehicle is sold by a local authority the owner can reclaim the sum of the proceeds of sale minus any removal, storage and disposal costs that may have accrued.

2.28 Local authorities have the power to dispose of abandoned vehicles that they have removed and are in their custody. The local authority may dispose of an abandoned vehicle in ‘such a manner as they think fit’ (this may include the sale of a vehicle at auction). End of life vehicles should only be destroyed at one of the network of Authorised Treatment Facilities. Disposal can only take place in accordance with the following timescales:

a) In the case of a vehicle which in the opinion of the authority is in such a condition that it ought to be destroyed, at any time after its removal;

b) In the case of a vehicle, not falling within paragraph (a), which –

   i) does not display a licence (i.e. tax disc) (whether current or otherwise and whether or not the vehicle is required to display a licence) and

   ii) does not display any registration mark (i.e. number plate) (whether indicating registration within or outside the United Kingdom).

At any time after its removal.

Note: The Clean Neighbourhoods and Environment Act 2005 has amended legislation relating to disposal of vehicles that do not display a current licence or registration mark, enabling them to be destroyed immediately after removal. A vehicle must satisfy both criteria in paragraph (b) in order to be disposed of immediately. Vehicles that can be disposed of immediately under paragraphs (a) and (b) can be done so without obligation to trace or inform the owner.

c) In any other case, at any time after the local authority have taken such steps as may be prescribed to find a person appearing to them to be the owner of the vehicle and either –

   i) they have failed to find such a person; or

   ii) he has failed to comply with a notice served on him in the prescribed manner by the local authority requiring him to remove the vehicle within the prescribed period from their custody.

Steps to be taken to find the owners of certain vehicles

2.29 This is covered in detail in regulation 12 of the 1986 Regulations.

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4 The owner of a vehicle is taken to also include the registered keeper as per the national record maintained by the Driver and Vehicle Licence Agency (DVLA).
2.30 If the vehicle carries a GB registration mark (number plate) the local authority should find and send a written notice to the owner (having found the details from the DVLA database) declaring that their vehicle has been removed and is being held in their custody and that should they wish to reclaim it they should do so within **7 days** (in England) of the notice being served otherwise the vehicle will be disposed of.

2.31 The owner of a vehicle in custody can remove the vehicle after satisfying the local authority that he is the owner and paying any charges that are due.

*Note: Charges are set out in the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 1989 (SI 1989/744), as amended.*

These can be viewed at: [www.opsi.gov.uk/si/si1989/Uksi_19890744_en_1.htm](http://www.opsi.gov.uk/si/si1989/Uksi_19890744_en_1.htm)

2.32 The owner of a vehicle, up to 1 year after the vehicle is sold by a local authority, can reclaim the value of the sale minus any charges that may be owed to the authority.

2.33 If more than one owner claims a vehicle that is in custody, or the proceeds of a sale of that vehicle, the local authority shall choose the one they “think fit” and treat him as the owner for the purposes of enabling him to remove the vehicle from custody or to reclaim the costs of a sale.

2.34 Local authorities are empowered to provide plant and apparatus for the purpose of disposing of vehicles. Under the ‘End of Life Vehicle Directive’ vehicles will have to be de-polluted and disposed of at an Authorised Treatment Facility.

2.35 It is a legal requirement that information relating to the vehicle, ascertained through a DVLA check using the registration number, be given to the following relevant authorities prior to disposal of a vehicle:

a) If the vehicle bore a GB registration mark, to the Secretary of State (i.e. DVLA), the chief officer of the police in whose area the vehicle was found and the Hire Purchase Information Company Limited.

b) The appropriate police chief and Secretary of State where the vehicle bore a Northern Ireland registration mark.

c) The appropriate police chief of the local authority in which the vehicle was found, and Secretary of State, in the case of a Republic of Ireland registration mark.

d) The appropriate police chief and the Secretary of State in the case of a Channel Islands, Isle of Man, or other country not previously specified, registration mark.
e) The appropriate police chief and the local authority in whose area the vehicle was apparently abandoned (if it is not the local authority which did the disposing) if no registration mark is found or the vehicle has a foreign number plate.

f) Any person who appears to the local authority to be the owner of the vehicle immediately before it was disposed of.

**Recovery of costs connected with removed vehicles**

2.36 The amounts cited are prescribed in the *Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc) Regulations 1989 as amended* and are inserted in brackets where appropriate.

The local authority can reclaim from any person responsible\(^5\) -

a) *(£105)* in respect of the removal of the vehicle;

b) *(£12 per 24 hours or part thereof)* in respect of any period during which the vehicle is in the custody of the authority; and

c) *(£50)* for disposal of the vehicle

2.37 Any sum recoverable by virtue of this section shall be recoverable as a simple contract debt in any court or competent jurisdiction.

2.38 If a person is convicted of an offence under Section 2(1), the court may order him to pay any costs to the local authority for the removal, storage and disposal of the vehicle to which they are entitled.

**Powers of Entry**

2.39 This is covered under Section 8 of the *Refuse Disposal (Amenity) Act 1978*.

2.40 Any person authorised in writing by the Secretary of State or a local authority may at any reasonable time enter any land for the purposes of investigating the need to carry out their removal and disposal of abandoned vehicle functions.

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\(^5\) person responsible means -

(a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless he shows that he was not concerned in and did not know of its being put there;

(b) any person by whom it was put in the place aforesaid;

(c) any person convicted of an offence under section 2(1) above in consequence of the putting of the vehicle in the place aforesaid.
Waste (Part 5 of the Act)

Section 42 Investigation and enforcement costs

3.1 Section 42 inserts a new section 33A into the 1990 Act which gives new powers to the courts to order an offender convicted of an offence (including illegal waste disposal or ‘fly-tipping’) under section 33 of the 1990 Act to pay the enforcing authority’s investigation and enforcement costs, and any costs associated with the seizure of vehicles involved in the offence. The costs can include the cost of disposing of on the contents of the vehicle.

Section 43 Clean-up costs

3.2 Section 43 inserts a new section 33B into the Environmental Protection Act 1990.

3.3 It enables the court to make an order requiring the offender to pay any of the Environment Agency, a waste collection authority or the occupier or owner of land, any costs incurred by them in removing waste that has been illegally deposited. Clean up costs can include removing the waste and/or taking any other steps to reduce the consequences of the incident.

3.4 The Environment Agency or a waste collection authority may not recover any costs that have already been recovered under a section 59 clearance notice. The measure also removes the £5,000 limit set out in the Powers of Criminal Courts (Sentencing) Act 2000.

3.5 This power will compliment existing powers which include powers under s.146 of the Powers of Criminal Courts (Sentencing) Act 2000 to deprive an offender of their driving licence, powers to issue community service orders, and the option to issue Anti-Social Behaviour Orders for fly-tipping offences.

Section 44 Forfeiture of vehicles

3.6 **Section 44** inserts a new section 33C into the Environment Protection Act 1990 which applies where a person has been convicted of an offence under section 33 consisting of the deposit or disposal of controlled waste. It allows the court to make an order to seize a vehicle that has been used to commit the offence. The order may give possession of and rights in the vehicle and its contents to the relevant enforcement authority.

3.7 Powers to deprive offenders of property used in a crime are already available under the Power of Criminal Courts (Sentencing) Act 2000 but possession is given to the police. This measure enables possession of the vehicle to be given to the Environment Agency and local authorities.
3.8 The court must have regard to:

- the value of the vehicle,
- the financial effects on the offender,
- the offender’s need to use the vehicle for lawful purposes, and
- whether the order will prevent future illegal waste activities.

3.9 The power to seek forfeiture will be exercised in accordance with Human Rights legislation. For example forfeiture would not be sought where seizure would be incompatible with an individual’s right to his private and family life. This measure is intended to provide a flexible remedy to deal with professional fly-tippers where forfeiture would interrupt or terminate their illegal business without disproportionately affecting their legitimate activities.

**Section 53 Supplementary enforcement powers**

3.10 Section 53 builds on an amendment that was made by section 55(6) of the Anti-Social Behaviour Act 2003. The ASB Act extended powers of investigation as set out in section 108 of the Environment Act 1995 to waste collection authorities for their functions under section 59 of the Environmental Protection Act 1990 related to clearing waste from land.

3.11 The Clean Neighbourhoods and Environment Act amendment further increases these powers so that they can be used by waste collection authorities in relation to any functions under Part II of the Environmental Protection Act, which includes illegal waste disposal and duty of care offences.

3.12 The powers set out in section 108 of the Environment Act are:

- to enter premises;
- to bring an authorised officer, a constable and equipment;
- to examine and investigate as required;
- to direct that premises are undisturbed;
- to take measurements and photographs as necessary;
- to take samples of articles or substances found;
- to dismantle or test any substance or article;
- to take possession of these substances;
- to require any person to give information relevant to the investigation;
- to require production of relevant information and records;
- to require any person to assist the investigation; and
- any other power conferred by regulations.

3.11 Section 110 sets out the offence for failing to comply with a requirement imposed under section 108. The maximum penalty is currently £5,000 or [6] months in prison.
Section 47 Abolition of requirement to contract out waste disposal functions (Part 5 of the Act)

Following the repeal of the divestment provisions in the Environmental Protection Act 1990 (EPA), the guidance below covers how waste collection and disposal authorities in England should achieve effective performance management through Best Value and provides advice on effective application of the full range of procurement options now open to waste disposal authorities.

Ensuring Effective Performance in Municipal Waste Management

Introduction

Scope of the guidance


4.2 This guidance should be read in conjunction with Circular 03/03 (as amended by Circular 02/04) on Best Value and Performance Improvement published by the Office of the Deputy Prime Minister in March 2003, and with Guidance on Municipal Waste Management Strategies and the accompanying practice guidance, published by the Department for Environment, Food and Rural Affairs in July and [date to be inserted in published guidance] 2005 respectively.

4.3 In light of the commencement (planned for the 18th October 2005) of section 47 of the Clean Neighbourhoods and Environment Act, repealing the requirement in section 32 of the Environment Protection Act 1990 for waste disposal authorities to divest their waste disposal function, this guidance provides advice on effective application of the full range of procurement options now open to waste disposal authorities.

Best Value authorities and the duty of Best Value

4.4 For the purposes of the Local Government Act 1999 (hereafter “the 1999 Act”), all local authorities with responsibility for waste management are designated Best Value authorities and are subject to the duty of Best Value. Best Value also applies to the six statutory joint waste disposal authorities established under section 10 of the Local Government Act 1985.

4.5 The duty placed on Best Value authorities by section 3 of the 1999 Act requires them to:
“make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness”

4.6 The duty applies to all waste management services provided, including waste collection, provision of facilities for recycling, street cleaning and litter control, and waste treatment and disposal.

Government’s key waste management objectives

4.7 In line with its commitment to sustainable development, the Government’s waste strategy aims to change the way waste is managed. Government policy seeks to break the link between economic growth and the amount of waste produced and to drive the management of waste up the waste hierarchy of reduction, re-use, recycling and composting, and energy recovery (see Figure 1 below). Where waste is produced it should be viewed as a resource to be put to good use - disposal should be the last option for dealing with it.

Figure 1 – The Waste Hierarchy

4.8 Waste should be managed in ways that protect human health and the environment and in particular:
- Without risk to water, air, soil and plants and animals;
- Without causing a nuisance through noise or odours;
- Without adversely affecting the countryside or places of special interest;
- Waste should be disposed of at the nearest appropriate installation, by means of the most appropriate methods and technologies.

4.9 The UK is bound by the EC Landfill Directive (99/31/EC), which sets mandatory targets for the reduction of biodegradable municipal waste sent to landfill. To help meet these requirements, Government has established national targets for recovery of municipal waste and recycling / composting of household waste. National waste management targets are summarised at Annex A.
Delivering quality services

4.10 The waste management services provided by waste collection and disposal authorities contribute directly to the quality of life of their citizens and to their experience of public services. These authorities are expected to deliver waste management services that are responsive to the needs of citizens, of high quality and cost-effective, and fair and accessible to all who need them.

4.11 The provision of a quality service requires a concerted commitment by waste authorities in planning, providing and maintaining services and in developing their own capacity to provide more integrated, efficient and cost effective waste management. It will involve working in partnership with a wide range of bodies at the local level. Partners will include the waste industry, the community sector, citizens, businesses and neighbouring waste authorities. In two-tier areas, it is imperative that the waste disposal and waste collection authorities work together to deliver an efficient and integrated service.

4.12 Thorough, long-term strategic planning, integrated effectively with spatial planning, is vital to meet the challenging objectives waste authorities face. Municipal Waste Management Strategies should reflect community aspirations and ensure cost-effective compliance with all existing statutory obligations, including the Landfill Allowance Trading Scheme and statutory targets for recycling and composting.

4.13 Delivery of quality public services also relies on Government setting the framework and policy direction within which services should be delivered. The Local Government White Paper, Strong Local Leadership – Quality Public Services set out a new performance framework within which Government is committed to working in partnership with local government to improve performance. It gives concrete expression to the 4 principles of public service reform:

**national standards**: a framework of clear and exacting performance standards, with performance independently monitored so that people can see how local services compare;

**devolution**: giving successful organisations more freedom to deliver these standards;

**flexibility**: removing artificial bureaucratic barriers which prevent staff and organisations from improving local services; and

**choice and contestability**: expanding choice so that users of public services are given the kind of options that they take for granted in other walks of life and taking full advantage of alternative means of provision where these would offer Best Value.
4.14 To help focus efforts in priority areas where joint working is necessary to deliver improvements, the Government and Local Government Association have agreed a statement of shared priorities, set out at Annex B.

**Measuring and monitoring performance**

4.15 Waste authorities require good quality data and information on waste arisings and management to enable them to monitor performance.

**Best Value Performance Indicators**

4.16 Government has established a suite of performance indicators for waste management within the overarching framework of Best Value Performance Indicators (BVPIs). The purpose of BVPIs is to contribute to and facilitate continuous improvement in the efficiency and effectiveness of services. They enable central Government to monitor progress over time, local authorities to measure their performance against national targets and to compare this against that of their peers, and they provide citizens with information about the performance of their local authority. BVPI data is annexed to or contained within an authority’s annual performance plan or equivalent. BVPIs are audited and published annually by the Audit Commission.

4.17 The full set of BVPIs is set out in a guidance document *Best Value Performance Indicators 2005/06* published by the Office of the Deputy Prime Minister.

**Statutory Performance Standards for recycling and composting**

4.18 All waste authorities in England have been set Statutory Performance Standards for recycling and composting household waste for 2003/04 and 2005/06. These are measured through the BVPIs for household waste recycling and composting.

**Landfill Allowance Trading Scheme**

4.19 Waste disposal authorities have also been allocated allowances specifying the maximum amount of biodegradable municipal waste (BMW) they can send to landfill under the Landfill Allowance Trading Scheme (LATS). Waste disposal authority compliance with the LATS, and therefore also with the UK’s Landfill Directive targets, will be measured by the Environment Agency. The Agency will use a mass balance calculation to monitor the amount of BMW sent to landfill in any year by each disposal authority. Waste disposal authorities are required by the Waste and Emissions Trading Act 2003 to provide quarterly returns to the Environment Agency, on the tonnage of waste collected, sent to landfill and

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diverted from landfill within three months of the end of each quarter. This information can be provided to the Environment Agency using WasteDataFlow.

4.20 M-BEAM, the Mass-Balance Estimator Allowance Manager, enables waste disposal authorities to estimate the number of LATS allowances they need to hold, in order to meet their obligations under the EC Landfill Directive to divert BMW from landfill. By comparing the number of allowances needed with the number of allowances held, waste disposal authorities can identify and model approaches (banking, borrowing, buying or selling allowances) to address any surpluses or shortfalls. M-BEAM then shows the financial implications of the modelled strategy, based on the user’s estimate of the future price of allowances. This can be combined with the local authority’s forecast of waste management costs derived from their municipal waste management strategy, to estimate total waste management expenditure.

WasteDataFlow

4.21 WasteDataFlow is the government online web based system for municipal waste data reporting by UK local authorities to Government. It is designed to allow faster and more accurate, efficient and regular data collection of municipal waste statistics; to enhance local authorities local data management for reporting and strategic planning purposes, and to offer them streamlined access to performance benchmarking with other authorities. In particular, it enables waste disposal authorities to meet the requirement to report quarterly data to Environment Agency under the LATS regulations.

4.22 WasteDataFlow provides data to support Government policy and enable it to monitor progress towards national and local targets.

Comprehensive Performance Assessment

4.23 The Comprehensive Performance Assessment (CPA) is an annual assessment by the Audit Commission of how well local authorities are delivering local services. CPA is used by the Commission to categorise local authorities according to their relative performance.

4.24 Waste management services are assessed under the Environment service block of the CPA, as well as through the shared priorities assessment within the Use of Resources block.
Reviewing performance

Requirements for review

4.25 Waste collection and disposal authorities are required to review all their functions, as specified by section 5 of the 1999 Act. Such reviews can play a significant role in helping to improve services, by providing an opportunity to fundamentally assess the functions and services provided.

4.26 The broad principles for conducting reviews are encompassed by the 4 "Cs" originally identified in DETR Circular 10/99 and re-affirmed in ODPM Circular 03/03. In carrying out reviews, authorities should, in no particular order:

- **challenge** why, how and by whom a service is being provided;
- **compare** process and performance of others across a range of relevant indicators, taking into account the views of both service users (or other stakeholders) and potential suppliers;
- **consult** key stakeholders, including where appropriate local taxpayers, service users, partners, the wider business community, the voluntary sector, social enterprises, staff and trade unions;
- use fair and open competition wherever practicable as a means of securing efficient and effective services.

4.27 Reviews should not be carried out simply because an undertaking has previously been given to assess a particular service. Many straightforward improvements can be made without the need for a review. But reviews can help where:

- there is a need to improve performance on a local or national priority; or
- it is unclear whether a service is still needed or its contribution is as effective as it could be; or
- there is a case for a new service or new configuration of an existing service; or
- there is evidence that the costs of a service are significantly out of line with comparable services elsewhere; or
- there is a clear opportunity to work with constituent and neighbouring local authorities to deliver common services through, for example, new technology.

4.28 In programming reviews, authorities should focus on the areas that present the most serious challenges and biggest opportunities for service
improvement. There may be scope for conducting joint reviews with other authorities.

4.29 Reviews will only be effective if they are scoped to achieve improvements that are ambitious and likely to deliver value for money. Genuinely challenging why and how a service is provided, regardless of whether it is a single service or a cross-cutting service, requires a fundamental rethink about the needs that the service is intended to address and the methods of delivery. It might include considering a range of possibilities such as helping needs to be met by service users, or introducing new services to meet previously un-met needs.

4.30 For a challenging review to be effective, authorities should typically involve:

**Board members and officers** throughout the review process to ensure that the scope of reviews reflects the authority’s strategic objectives and priorities, as well as the perspective of actual and potential users, including hard-to-reach groups;

**Staff, particularly front line staff**, who have knowledge of the current service. Authorities must consult recognised unions and employees’ associations and staff when reviewing functions. This ensures that better decisions are made and there is an increased understanding of the reasons for those decisions. The mechanisms for involving staff and trade unions should be set out clearly, including how their views will be taken into account in decision-making processes;

**Service users and,** when appropriate, the **wider community,** who can provide useful information on how well current services are working and how they may be improved. It is important that authorities seek out the views of all potential users, including those that have been traditionally under-represented, and other hard-to-reach groups; and

**“Third parties”** in providing an element of challenge in reviews. Third parties, such as partners or alternative providers in the public, voluntary, community, social enterprise and private sectors, or service users (or potential service users) can bring an external perspective and expertise that may be lacking in the authority. They can also play an important scrutiny role by questioning and challenging proposed approaches.

**Municipal waste management strategies**

4.31 It may be appropriate for the review of a service to be subsumed into a broader exercise to review or develop the authority’s municipal waste management strategy. Waste authorities should consult Government guidance on this subject before commencing any review.

4.32 Waste collection and disposal authorities in two-tier areas have a duty under the Waste and Emissions Trading (WET) Act 2003 to have in place a joint
strategy for the management of their municipal waste. Authorities are exempted from this duty if they are in compliance with their Statutory Performance Standards for recycling and composting and (for waste disposal authorities) their obligations under the LATS. Guidance on Municipal Waste Management Strategies, and the accompanying practice guidance, must be taken into account by all authorities bound by the duty. All waste authorities are strongly advised to put in place a robust long-term strategy and to integrate the development and implementation of such a strategy with development of their Regional Spatial Strategy and relevant Local Development Frameworks.

Peer review and benchmarking

4.33 The use of a proportionate and accredited peer challenge mechanism provides further opportunities for third party involvement in reviews. Government expects waste authorities to explore the scope for using peer challenge during reviews. WIP Local Authority Support Unit (LASU) has resourced an IDEA pilot Peer Review pilot programme in waste. It has resulted in the establishment of the waste benchmarks for service appraisal, delivered by peer-clearing house of member/officer peer review teams. The benchmark diagnostic has been incorporated into this year’s Beacon Council programme on waste outlined in the next section.

4.34 In addition to measuring performance against targets, authorities can benchmark their procurement performance against that of other organisations. This may include other local authorities, other public authorities, organisations in the private sector and organisations in the not-for-profit sector.

Beacon Council scheme

4.35 The Beacon Council scheme covers all English local authorities and is intended to recognise those authorities demonstrating best practice in a particular field so that other authorities can benefit from their experience. Sustainable waste management featured in the scheme in 2000/01, and waste and recycling has been chosen as one of the seven themes for 2006/07.

4.36 Waste authorities awarded Beacon Status will be exemplars of sustainable waste management and in the forefront of authorities in delivering improvements in practices. They will work as a catalyst with other authorities, community groups, agencies and others in the public and private sectors to deliver Best Value for waste, spreading best practice and encouraging innovation.

4.37 LASU has also constructed instruments for authorities to interrogate their existing schemes for greater efficiencies such as the kerbside capture toolkit. In addition authorities seeking efficiencies via the tendering process are encouraged to utilise the recently developed procurement model and toolkit.
Assessing service competitiveness

4.38 The Local Government (Best Value) Performance Plans and Reviews Order 1999 (SI 1999/3251) requires waste authorities to assess the competitiveness of their performance in exercising their functions. While there is discretion about how individual services are provided, the highest standards of service are more likely to be achieved where there is genuine competition, choice for service users and a mixed economy rather than where any one supplier dominates the provision of services.

4.39 Rigorous challenge of current service delivery arrangements is likely to include exacting comparisons with the best that other authorities and service providers can offer through the application of new technology, modern management and employment practices, and genuine innovation. When it is clear that improved services can be achieved by making changes to management and employment practices, for example, it is important that these are addressed as quickly as possible, whether or not the authority intends to retain the work in-house or seek an external partner. Failure to do so can perpetuate poor quality and high costs, which are inconsistent with Best Value. Partnerships are likely to work better where the decision to seek a partner has been considered carefully after quality and cost issues have been tackled internally.

4.40 The joint Government / Local Government Association response to the report by the Local Government Procurement Taskforce (the “Byatt Report”) endorsed the recommendation that local authorities should re-consider their procurement practices to ensure they are getting the maximum value from them. Successful procurement strategies are likely to be based on whole life cost considerations that include subsequent revenue implications, and not simply the lowest initial tender price. Procurement expertise has a critical role to play in Best Value and should be brought to bear at an early stage.

4.41 The National Procurement Strategy for Local Government, jointly launched by ODPM and LGA in 2003, follows the recommendations of the Byatt Report and it encourages councils to examine their procurement, partnering, collaboration and other routes to secure value for money. The Strategy puts forth a vision for all councils to deliver ‘World Class’ practices in procurement. Strategic objectives are then set out in relation to four themes (identified by earlier research including the Byatt Taskforce and the Strategic Partnering Taskforce) as focuses for improvement:

- Providing leadership and building capacity
- Partnering and collaboration
- Doing business electronically
- Stimulating markets and achieving community benefits
The National Procurement Strategy proceeds to set out a range of milestones to achieve strategic objectives, which cover the three-year period of the Strategy. See www.odpm.gov.uk/nps.

Partnership working

Authorities should consider a practical range of options for service delivery and select the most appropriate, based on a robust and challenging process. The options might include: partnerships with other public, private and voluntary sector bodies, at both a strategic and local level. Authorities must ensure that public procurement rules are followed fully where there is inter-authority contracting for services. The Office of the Deputy Prime Minister’s Strategic Partnering Taskforce developed a range of guidance on how to set up effective partnerships for delivering services. This agenda is being pursued further through the local authority-led project Joint Working in Waste Management under the auspices of the Innovation Forum.

Government strongly supports the development of joint working arrangements – particularly in two-tier areas - where these can deliver more effective and efficient services that meet national obligations and the needs of service users. Such arrangements might range from a simple Memorandum of Understanding between authorities, through to a legally-constituted Joint Board with delegated decision-making powers.

Improvement planning

Responsibility for improvement and improvement planning, conferred by the duty of Best Value, rests with each waste collection and waste disposal authority. Delivering improvement will require a concerted commitment to look continuously for ways to deliver better quality services. The drive for continuous improvement must be embedded throughout the organisation. Elected Members must take responsibility for the outcomes that Best Value is designed to achieve.

The way in which waste authorities approach Best Value and improvement planning also needs to take account of the Audit Commission’s 2001 statement Changing Gear which identified the following four building blocks as key to achieving and sustaining improvement:

- ownership of problems and willingness to change;

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3 http://www.idea-knowledge.gov.uk/idk/core/page.do?pageId=678952

4 Changing Gear – Best value annual statement 2001, Audit Commission, September 2001
• a sustained focus on what matters;
• the capacity and systems to deliver performance and improvement; and
• integration of best value into day-to-day management.

4.47 The CPA assists local authorities with improvement planning by providing an independent assessment of overall performance. The Audit Commission’s 2003 report *Patterns for Improvement* sets out the factors that have a positive impact on service delivery, including:

• clear frameworks for managing performance that support priorities and links to planning and budget setting;
• human resource strategies that harness staff skills to match levels of ambition; and
• an ability to build capacity through partnership and procurement.

4.48 The six Joint Waste Disposal Authorities (JWDAs) are not assessed under the CPA process. Their constituent authorities will need to consider how the contribution they make as part of a JWDA to sustainable waste management in the area, is reflected in their CPA.

4.49 Waste authorities should make use of mechanisms such as Best Value reviews, self-assessments, analysis of inspection and audit reports and public consultation to identify and act on opportunities for improvement.

4.50 In considering improvement planning, waste authorities need to address the impact of those services on all sections of the community. They already have a duty under the Race Relations (Amendment) Act 2000 to promote racial equality, and the Government is committed to introducing similar obligations in respect of gender and disabilities when Parliamentary time allows. The Audit Commission has highlighted the relatively poor performance of local authorities in respect of equality and diversity, and concludes that these factors need to be better integrated into all aspects of delivering, monitoring and inspecting services. Government endorses this view and the National Procurement Strategy includes a specific milestone that encourages all local authorities to address, among other areas, diversity and equality in their corporate procurement strategies.

4.51 Waste authorities should also consider the contribution their activities can make towards the long-term well being of their communities. This requires recognition that actions taken locally have wider impacts and can contribute to damaging developments such as global warming. Sustainable development is fundamental to Best Value, and should be reflected in an authority’s programme of reviews, the review process itself, and in improvement planning arrangements. Government’s set of shared principles of sustainable development is set out at Annex C.

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*Equality and Diversity*, Audit Commission, May 2002
Role of inspection

4.52 External scrutiny plays a key role in helping waste authorities improve performance, through assessments of the extent to which Best Value is being delivered. Inspections are risk-based and co-ordinated. Wherever possible, the timing of inspections is agreed with the inspected body. Inspections focus on priority areas for improvement, and highlight areas of risk or weakness that may hinder improved performance. The frequency of such inspections is at the discretion of the Audit Commission. Authorities are expected to respond to recommendations contained in inspection reports prepared in accordance with section 13 of the 1999 Act.

Engagement and intervention

4.53 Section 15 of the 1999 Act provides the Secretary of State with powers to intervene where an authority is failing to deliver Best Value. In the case of waste management, this might be linked to failure to meet statutory performance standards for recycling and composting. Government is committed to working with authorities and others to ensure that the incidence of failure is minimised. However, Ministers have made clear that they take failure to deliver Best Value seriously and will act if necessary.

4.54 In respect of failure to meet 2003/04 Statutory Performance Standards, Ministers have engaged personally with each of the poorest performers and official level meetings have been held with a further group of authorities. The positive response to these meetings means that Ministers have not yet considered it necessary to invoke statutory powers in these cases, although this remains an option for the future.

Procurement and contracts

Requirements on waste disposal authorities

4.55 Section 47 of the Clean Neighbourhoods and Environment Act 2005 repeals the requirement in section 32 of the Environmental Protection Act 1990 (EPA 1990) for waste disposal authorities to divest their waste disposal functions. The main effects of the repeal are that:

- waste disposal authorities may choose to bring back in house part or all of their waste disposal function; and
- in tendering contracts, waste disposal authorities are bound by the public procurement regime, namely the relevant EC Treaty principles of equal treatment, non-discrimination on grounds of nationality and transparency, together with the detailed public procurement rules which are set out in the relevant EC Directive and incorporated into domestic law by regulations. The detailed rules apply only to contracts above certain values; the EC Treaty principles apply to all contracts, irrespective of value. Further details can be found on the OGC website: http://www.ogc.gov.uk.
4.56 Newly available procurement and contracting options should be taken into account when contracts come up for renewal, to accompany scheduled development or review of the authority’s municipal waste management strategy, or as part of a pre-planned service review, unless there is an over-riding reason to bring forward that consideration. Repeal of the divestment provisions should not provide an opportunity for instant challenge of contract arrangements established in accordance with good practice that are delivering the required results, for example if an authority is still in the process of divestment it should continue with the process that has been decided upon.

4.57 On the other hand, it is possible that a current contract let some time ago may not be achieving Best Value now, even though it met the EPA 1990 conditions. If contracts do not meet current and future needs and permit continuous innovation and improvement, authorities will need to negotiate how to accommodate Best Value principles using any scope in existing contracts for variation or re-negotiation. This is of particular importance where long term disposal contracts are in place.

4.58 It remains Government’s view that, when procuring services, fair and open competition among potential service providers will in most cases be the best way of demonstrating the competitiveness of a service. Authorities are expected to take full account of opportunities for innovation and partnership with other public bodies and the private and voluntary sectors.

Requirements on waste collection authorities

4.59 Legislation requiring compulsory competitive tendering (CCT) was repealed from January 2000 by the 1999 Act. Both waste collection and street cleansing services had been subject to prescriptive provisions. The repeal provided further options available to authorities for procuring these services under Best Value.

4.60 However, there are differences to be considered when procuring collection services as opposed to waste disposal services - little capital expenditure is required; costs are in operations for collection services, and long term contracts may not be appropriate.

4.61 Following the repeal of CCT requirements, options that waste collection authorities will wish to consider include the following:

- **Combining waste collection and street cleansing** services - many authorities already operate a combined service.

- **Combining street cleansing services with grounds maintenance** or other environmental services - combining a number of services previously
standing alone can produce economies of scale and allow a more flexible use of resources.

- Neighbouring authorities could issue **joint contracts for collection**. This could be particularly beneficial when considering the introduction of kerbside collection schemes. The increased number of recyclables handled by the contractor (when compared with a contract covering only a single collection authority) may make it easier to secure market outlets with re-processors.

- **Combining waste collection and waste disposal** - of particular relevance to unitary authorities looking to develop fully integrated waste management services. Collection may fit in as part of a long-term contract with one or more private companies, or it may be more appropriate to procure collection separately.

**Contract scale**

4.62 Waste management services are possibly unique among local authority services as they are often procured through long-term contracts of more than twenty years in length, including through the Private Finance Initiative (PFI). This facilitates the level of investment required over the next fifteen years including to meet obligations under the EC Landfill Directive.

4.63 It is waste authorities’ responsibility to ensure that long-term contracts are designed sufficiently flexibly and with review mechanisms to ensure that continuous improvement can be secured throughout the life of the contract.

4.64 Review and variance mechanisms should be designed to be compatible with planned service reviews and reviews of the municipal waste management strategy. Contracts should contain a performance management framework that allows the authority and the contractor to measure the effectiveness and efficiency of the service being provided, and to enable the authority to demonstrate that continuous improvements are being delivered over the length of the contract.

**Service delivery options**

4.65 There is broad consensus about what constitutes best practice in procurement. For example, a rigorous approach to options appraisal, better commissioning, greater co-operation between authorities and compliance with EC public procurement law. Compared to other services areas, waste management is fortunate in having a well established market for the provision of a range of services with a range of providers in all sectors - public, private and voluntary, including existing Direct Service Organisations and LAWDCs. It is probable that no single provider is in a position to provide the best overall service and that the Best Value solution may involve a combination of the authority, the private sector and the voluntary sector. The choice of service delivery options
should flow from a review in which authorities will need to demonstrate that they have explored the full range of practical options.

4.66 Options for service delivery include:

- **Re-negotiation of existing arrangements** with current providers where this is permissible, for example at the next service review.

- **Transfer of the service to another provider.** The repeal of the EPA 1990 divestment requirements provides scope for authorities to move to using outcome-based tenders, which enables potential contractors to determine certain details of service delivery and to develop innovative provision methods. Under Best Value, letting contracts by competitive tender will continue to be an effective way of demonstrating that the delivery of the waste service is competitive, although a competitively let contract does not, in itself, ensure that the service will continue to be Best Value.

- **Bringing the service back in-house.** Returning to local authority control and ownership assets and staff from a LAWDC when current contracts expire is likely to be complex. A LAWDC’s activities may be broader than those the authority has powers to operate or the authority may not have powers to create an organisation other than a LAWDC. The new TUPE regulations, which come into force in April 2006, provide that TUPE will apply when externally provided services are brought back in house. The Public Procurement Rules will apply to any purchase made by the in-house provider. Authorities considering this option should obtain their own legal advice.

- **Joint commissioning or delivery of the service with other waste authorities** can often bring economies of scale and a larger-scale contract can in the right circumstances be attractive to service providers. Co-operation between authorities and the development of integrated waste management services have been identified as being a key factor in meeting the goals of the Waste Strategy.

- There may be scope for **joint contracts for waste disposal** between neighbouring authorities or on a regional basis. Perhaps more ambitiously, there may also be scope for joint commissioning of collection and disposal contracts in two-tier areas. Such contracts could provide for a fully integrated waste management system built around joint municipal waste management strategies that are now being put in place around the country. However authorities exploring this option should consider its potential impact on competition and possible exclusion of smaller, more specialised providers. County councils and neighbouring unitary authorities could also let joint waste disposal contracts. Combining waste streams from multiple authorities could make provision of a range of waste management facilities as part of an integrated system- more economically
and practically viable for both authorities. Integrated contracts can provide economies of scale and the options of multiple solutions, but run the risks of future disagreement between authorities, particularly with changes in political makeup or where local pressures encourage collection solutions that may not provide suitable input for disposal solutions.

- Creation of a public-private partnership, possibly jointly with other waste authorities. Local authorities may wish to explore the possibility of partnership working with a range of partners in the private or voluntary sectors in order to secure waste collection or disposal services, or individual elements of the service, such as separation of recyclables, provision of energy from waste facilities etc. Partnerships can help share risk and allow authorities to access new resources and specialist skills from those with particular expertise and new service delivery options. If partnerships are to work it is important that all partners understand the key objectives of the partnership and the tasks, role and responsibilities of each partner. A specific form of public-private partnership, of particular relevance to waste disposal, is that secured through the Private Finance Initiative. This is discussed in more detail below.

### Procurement requirements

4.67 There exist a number of options for funding the infrastructure necessary for meeting the targets in the EC Landfill Directive and Waste Strategy 2000. The main differences are between public and private borrowing.

4.68 In considering options for either waste collection or waste disposal services authorities will need to bear in mind that they must still comply with existing EC public procurement legislation. Where the public procurement regulations, which implement the relevant EC legislation, apply to a particular procurement, certain tendering procedures must be followed. These include advertising, timetabling procedures and rules in relation to specification of requirements and selection of provider.

4.69 A contract award notice must be published in the OJEU at the end of the process. Advice should be taken from appropriate procurement and legal advisers as necessary to ensure compliance with the public procurement regime. Much useful information can be found on the OGC website at: http://www.ogc.gov.uk.

4.70 Failure to comply with public procurement rules can result in procurement procedures being halted pre-award by way of court injunction. A challenge after contract award to the procedures adopted can result in damages being awarded to a disappointed potential provider. Further, complaints can be submitted to the EC Commission, which can in turn lead to action against the UK for non-compliance with the EC Treaty.
Funding options

Public funding

4.71 Public finance includes providing capital out of existing budgets, or through prudential borrowing. Alternatively, a private sector contractor can be required to provide the financing. Existing sources of local authority funding include council tax, asset sales, existing borrowing approvals, and specific waste initiatives. However, while these may be sufficient to fund small infrastructure projects, for large-scale procurement further funding will be required.

Prudential borrowing

4.72 The rules on prudential borrowing have been amended via the Local Government Act 2003 to permit councils to borrow capital finance directly from the Public Works Loan Board or a private lender, without requiring permission from central government, if they can show they have the capacity to make repayments. The Prudential capital finance system took effect on 1 April 2004. The powers are in the Local Government Act 2003 (Part 1). Local authorities are now free to borrow for capital projects without Government consent – provided they can afford to service the debt without extra Government support.

4.73 Local authorities may borrow directly from the market or from the Public Works Loan Board (PWLB). The PWLB lends up to a council’s Affordable Borrowing limit. Councils borrow based on the ability of the council to repay, not against specific projects.

4.74 Prudential borrowing could enable authorities to tender simply for construction and operation of projects, avoid the need to negotiate bank financing or pay a return to a private investor. However, the authority would have to negotiate the interface between construction and operations and maintenance contracts itself, and also be responsible for due diligence being carried out on the project, rather than this being performed by the lender as in a traditional PFI project. Varying contracting structures should be considered to ensure mitigation of risks for the authority.

4.75 If an authority cannot borrow sufficient funds to finance a project using the prudential borrowing framework, it will need private sector funds for the capital expenditure. It may still be possible to make use of prudential borrowing, such as for buying sites, planning, infrastructure works, or to be a shareholder or partner in a project. Such routes would require careful allocation of responsibility and risk to ensure that the risk assumed by the authority is not disproportionately greater than if it had followed a more traditional PFI route.

Private Sector Funding

4.76 Private financing can be via ‘corporate financing’, where a private company contractor provides funding directly from cash reserves, or ‘project
financing’, where funding is raised by the private company from banks. Where authorities are considering private funding they should take advice from the 4Ps, who provide comprehensive procurement support to local authorities.

Public Private Partnerships

4.77 In Public Private Partnerships (PPP), a private company provides the up-front finance for building the waste management infrastructure, rather than the authority. The contractor’s financing costs are reimbursed by a higher service charge paid by the authority over the course of a long term contract. PPP projects must be structured to ensure appropriate transfer of risk.

Private Finance Initiative

4.78 A particular form of long-term contract used to secure services is through the Private Finance Initiative (PFI), whereby the private sector designs, builds, finances and operates the waste management infrastructure in return for a long-term contract with the authority. An authority using PFI may apply to Government for PFI credits, which provide the authority with support for the capital element of the gate fee.

4.79 PFI has proved particularly suitable for the development of fully integrated waste management schemes due to the capital intensive nature of the necessary facilities, in particular Material Recovery Facilities and Energy-from-Waste Plants. To date, nine schemes have reached contract close:

Isle of Wight
Kirklees
Hereford and Worcester
Surrey
South Gloucestershire
East London Waste Authority
East Sussex with Brighton and Hove
Leicester City
West Sussex

4.80 Another twelve projects have been approved for PFI credits and are in the process of being procured.

4.81 Waste PFI has been less amenable to standardisation than areas such as hospitals and schools, being more specialised. PFI can only deliver value for money if there is sufficient interest in tendering for bids to be competitive, and if bid and transaction costs can be kept down. As a result, to obtain PFI credits all projects are required to use standard contracts as set out in SOPCv3, and to involve capital expenditure of at least £20 million.

4.82 In assessing applications for credits for PFI waste management schemes, the Government will be looking at not only whether they meet the national
objectives for waste contained in the Waste Strategy but also whether they reflect Best Value principles. The criteria for PFI bids require that in two-tier areas, proposals should demonstrate how the two tiers of local authority would work together to deliver the targets.

**LAWDCs and companies formed following the repeal of the divestment provisions**

4.83 The Secretary of State will implement appropriate transitional provisions to enable a LAWDC formed before the repeal of s32 of the Environment Protection Act 1990 (“the 1990 Act”) to continue its commercial waste disposal functions. This will allow local authorities that wish to continue performing their waste disposal functions through an exiting LAWDC to continue to rely on powers given to authorities under s32.

4.84 Local authorities wishing to set up a LAWDC after the repeal of s32 of the 1990 Act will no longer be able to rely on the powers under s32. Local authorities wishing to trade in waste disposal functions will have to do so within the framework of s95 of the Local Government Act 2003 (“the 2003 Act”) and the linked Local Government (Best Value Authorities)(Power to Trade)(England) Order 2004 (S.I. 2004/1705) (“the 2004 Order”).

4.85 Section 95 of the 2003 Act and the linked 2004 Order imposes a number of conditions of local authorities wishing to trade. These include, amongst other things, the local authority:

- being categorised as “Excellent”, “Good” or “Fair” under s99(4) of the 2003 Act;
- having prepared a business case to support the proposed trading; and
- having regard to the Secretary of State’s statutory guidance “General Power for Local Authorities to Trade in Function Related Activities Through a Company” — July 2004.

4.86 Advice should be taken from legal advisers to ensure local authorities are authorised to conduct their waste disposal functions through a company under s95 of the 2003 Act.

**Efficiency**

4.87 Efficiency has been a key issue for local government for many years. It now has more prominence, following the publication of Sir Peter Gershon’s report *Releasing Resources to the front Line - Independent Review of Public Sector Efficiency* in July 2004.

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4.88 This efficiency review was issued at the same time as the presentation of the 2004 Spending Review by the Chancellor of the Exchequer, and the efficiency review was seen as a key aspect of the Spending Review. The 2004 Spending Review covers the period from April 2005 to March 2008. All central Government departments have progressive targets for efficiency gains over this period.

Responsibilities

4.89 The Office of Government Commerce (OGC) and HM Treasury are jointly responsible for overseeing the implementation of the efficiency agenda across the wider public sector, and for realising £21.5bn of efficiency gains in 2007/08. The Office of the Deputy Prime Minister (ODPM) is responsible for overseeing overall efficiency gains across local government of £2.15bn, £4.30bn and £6.45bn in 2005/06, 2006/07 and 2007/08, respectively, relative to the 2004/05 baseline. Defra is responsible for overseeing the achievement of £30m, £135m and £299m, in the same three years, respectively, in Environmental Services (waste management and street cleansing).

4.90 Waste collection and disposal authorities are responsible for the delivery of these efficiency gains, with the central Government departments providing guidance and support.

What is efficiency?

4.91 Efficiency is not about cuts, but about raising productivity and enhancing value for money. Efficiency gains accrue when projects achieve one or more of the following:

- Reduced inputs (money, people, assets, etc) for the same outputs;
- Reduced prices (procurement, labour costs, etc) for the same outputs;
- Greater outputs or improved quality (extra service, productivity, etc) for the same inputs;
- More outputs or improved quality in return for an increase in resources that is proportionately less than the increase in output or quality.

4.92 The efficiency agenda represents an opportunity – a chance to identify resources capable of reinvestment in the frontline, or to hold down council tax. In the environmental services area, this means that improved efficiency should allow authorities to redirect the resources that are released to support the delivery of improved services and infrastructure, thus helping to meet their ambitions to set-up and boost recycling and cleaner ways of managing waste.

4.93 The view that efficiency gains can be achieved by greater degrees of collaboration between councils - including effective joint working between waste collection and waste disposal authorities - is becoming increasingly widespread. There are a number of examples that show that co-operation between local
authorities can work well, often through collaborative procurement or joint service delivery arrangements for some waste management services.

4.94 Procurement practices are themselves a key area for delivering efficiencies, and it is possible that some authorities could make better use of purchasing power by aggregating requirements for services and facilities. Collaboration also provides an opportunity to share know-how and, where appropriate, to pool and even reduce the resources that go into procurement.

Calculating and Reporting Efficiency Gains

4.95 The principles and practice to be applied in calculating efficiency gains are detailed in the ODPM's Efficiency Technical Note. ODPM provided further guidance in its documents Delivering Efficiency in Local Services – Detailed Guidance for Local Authorities and Delivering Efficiency in Local Services – Information for Leaders and Chief Executives (both January 2005).

4.96 Reporting of the efficiency gains by the local authorities is by way of the Annual Efficiency Statement (AES) process. Specific guidance and feedback on the AES process is posted on the ODPM web site.

Environmental services support and enablers

4.97 Defra is providing guidance and support to local authorities in the area of environmental services' efficiency. Defra’s Waste Implementation Programme (WIP) is working with a number of bodies to provide guidance and advice to local authorities. One key aim is to help to improve procurement skills, and support successful engagement with the process overall, including PFI-based procurements. A range of advice is available, including help with contract design and negotiation, to save time and money and feed into effective contracts.

4.98 Defra is working closely with the Regional Centres of Excellence (RCEs), to promote collaboration, and co-ordinate and bring to bear all of the support for the efficiency agenda. The RCEs operate through nine regional locations, and were originally established to act as centres of excellence for procurement transformation in local government. They have subsequently assumed a more wide-ranging role in terms of the efficiency agenda. The nine RCEs have each taken responsibility for one or more functional or cross-cutting efficiency areas. In the case of environmental services, the Eastern Region has lead responsibility.

4.99 The RCE web site is being used as the common location for the efficiency measurement toolkits, which the lead Central Government Departments have

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8 [http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=6957&l=2](http://www.odpm.gov.uk/stellent/groups/odpm_control/documents/contentservertemplate/odpm_index.hcst?n=6957&l=2)

developed to help the Local Authorities to measure their efficiency gains. In the case of environmental services, the Defra Environmental Services Efficiency (DESE)-Toolkit was made available for the AES Backward Look at 2004/05, and will be refined for the Mid-year Look in November 2005. The DESE-Toolkit should help Local Authorities to forecast, calculate and demonstrate the gains that have been achieved in environmental services.
ANNEX A

NATIONAL WASTE MANAGEMENT TARGETS

1. The UK is bound by the EC Landfill Directive (99/31/EC) which sets mandatory targets for the reduction of biodegradable municipal waste sent to landfill. The UK national targets are:

   • By 2010 to reduce biodegradable municipal waste landfilled to 75 per cent of that produced in 1995;
   • By 2013 to reduce biodegradable municipal waste landfilled to 50 per cent of that produced in 1995;
   • By 2020 to reduce biodegradable municipal waste landfilled to 35 per cent of that produced in 1995.

2. To help meet these requirements, the Government has established national targets for recovery of municipal waste and recycling / composting of household waste:

   National recycling/composting targets:

   • To recycle or compost at least 25 per cent of household waste by 2005;
   • To recycle or compost at least 30 per cent of household waste by 2010;
   • To recycle or compost at least 33 per cent of household waste by 2015.

   National recovery targets:

   • To recover value from 40 per cent of municipal waste by 2005;
   • To recover value from 45 per cent of municipal waste by 2010;
   • To recover value from 67 per cent of municipal waste by 2015.
ANNEX B

THE STATEMENT OF SHARED PRIORITIES AND THE NATIONAL PSA FOR LOCAL GOVERNMENT

The Statement of Shared Priorities

1. Central and local government share a strong commitment to improving our local services through investment and reform. Local councils have a key contribution to make as a result of their local democratic accountability and their ability to integrate the work of different agencies and organisations at a local level.

2. By working together to improve delivery, we can ensure:

- we achieve faster progress towards ambitious targets;
- services reflect the different needs and aspirations of local communities and contribute to tackling deprivation; and
- the right technology and support are put in place to underpin successful delivery.

3. Across the board improvement is essential. We nevertheless need to focus our efforts on a number of key priorities:

- raising standards across our schools by helping all schools match the excellence of the best, sustaining improvement in primary schools, transforming secondary schools and ensuring that the school workforce has the capacity to support this;

- improving the quality of life:
  - of children, young people and families at risk by tackling child poverty, maximising the life chances of children in care or in need and strengthening protection for children at risk of abuse;
  - of older people by enabling them to live as independent lives as possible and avoid unnecessary periods in hospital;

- promoting healthier communities and narrowing health inequalities by targeting key local services - such as health, education, housing, crime and accident prevention - to match need; and the encouragement of healthy lifestyles;

- creating safer and stronger communities by working with the police and other local agencies to reduce crime and anti-social behaviour, strengthen community cohesion and tackle drug abuse;

- transforming our local environment by improving the quality, cleanliness and safety of our public space;
• **meeting local transport needs more effectively** by improving bus services and other forms of local transport and securing better access to jobs and services, particularly for those most in need; and

• **promoting the economic vitality of localities** by supporting business improvement, providing positive conditions for growth and employment, improving adult skills, helping the hardest-to-reach into work, and extending quality and choice in the housing market.
ANNEX C
THE SET OF SHARED PRINCIPLES OF SUSTAINABLE DEVELOPMENT

1. Defra’s Aim is Sustainable Development, which means a better quality of life for everyone, now and for generations to come, including:
   • a better environment at home and internationally, and sustainable use of natural resources;
   • economic prosperity through sustainable farming, fishing, food, water and other industries that meet consumers’ requirements;
   • thriving economies and communities in rural areas and a countryside for all to enjoy.

2. Securing the Future, the UK strategy for sustainable development provides a set of shared principles for sustainable development. They bring together and build on the various previously existing UK principles to set out an overarching approach.

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