Consultation on meeting EU Landfill Diversion Targets

March 2010
Consultation on meeting EU Landfill Diversion Targets

Contents

1. Executive Summary 5

2. Background and context 9

3. The UK’s revised approach to reporting against the landfill diversion targets 11
   • The revised approach to the definition of biodegradable municipal waste 11
   • Impact on baseline and the landfill diversion targets for the UK 13
   • Impact on reporting obligations in England 15
   • Impact on monitoring obligations in England 17

4. England’s approach to meeting the landfill diversion targets 18
   • Approach to date in England 18
   • Assessment of progress against revised targets 18
   • Overview of policies to divert biodegradable waste from landfill 20
   • Existing policies to divert biodegradable waste from landfill 21
   • Potential future policies to divert biodegradable from landfill 22
   • Consideration of options 24

5. Amending existing legislation to report against the landfill diversion targets 26
   • Definition of waste to be included in LATS 26
   • References to targets 27
   • Allocation of allowances 27
   • Supplementary penalties 28
   • England targets in non-target years for the Landfill Directive 28
   • Banking, Borrowing and Trading 29

List of consultation questions 30
Glossary of abbreviations 31
SCOPE OF THE CONSULTATION

<table>
<thead>
<tr>
<th>Topic of this consultation</th>
<th>The implications of changing the UK’s approach to meeting targets to reduce the amount of biodegradable municipal waste sent to landfill in the Landfill Directive.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope of the consultation</td>
<td>Changes to the definition of municipal waste and the UK targets, impacts on reporting and monitoring obligations, and the implications for domestic policies to divert biodegradable municipal waste from landfill. In particular gaining stakeholder views on the future of the Landfill Allowance Trading Scheme.</td>
</tr>
<tr>
<td>Geographical scope</td>
<td>England</td>
</tr>
</tbody>
</table>

BASIC INFORMATION

<table>
<thead>
<tr>
<th>To:</th>
<th>Local authorities, waste management industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>Body responsible for the consultation</td>
<td>Defra. Waste Programme</td>
</tr>
<tr>
<td>Duration</td>
<td>18\textsuperscript{th} March 2010 – 10\textsuperscript{th} June 2010</td>
</tr>
<tr>
<td>Enquiries</td>
<td>Mark Millett</td>
</tr>
<tr>
<td>How to respond</td>
<td>Postal responses to Municipal Waste Team, Area 6C, Ergon House, Horseferry Road, London SW1A 2PL. Email responses to: <a href="mailto:Landfill.Policy@defra.gsi.gov.uk">Landfill.Policy@defra.gsi.gov.uk</a></td>
</tr>
<tr>
<td>After the Consultation</td>
<td>After analysing the responses the Government response will be published on the Defra website.</td>
</tr>
<tr>
<td>Compliance with the Code of Practice on Consultation</td>
<td>The consultation complies with the Code of Practice.</td>
</tr>
</tbody>
</table>

Background

| Getting to this Stage        | Discussions have taken place with the European Commission on the UK’s approach to meeting the landfill diversion targets and we have agreed with them that we need to broaden our definition of municipal waste for the purposes of reporting against the targets in the Landfill Directive. Therefore, the consultation addresses the implications of changing the UK’s definition and reporting against the new targets, and considers the policies needed to ensure we meet the new targets. In addition a consultation was held in 2007 on the definition of municipal waste used in Landfill Allowance Trading Scheme and changes to it, in order to clarify the different interpretations between the Waste and Emissions Trading Act and the scheme guidance. Following the consultation a commitment was made to make legislative changes to clarify the legislation. |

| Complementary information    |                                                                                                                                                                                      |
1. Executive Summary

1.1 The Landfill Directive (1999/31/EC) set challenging targets for Member States to reduce the amount of biodegradable municipal waste sent to landfill – the "landfill diversion targets". Following discussions with the European Commission, Defra has agreed that the UK’s approach so far to meeting those targets should be changed. This consultation addresses the implications of changing the UK’s approach to meeting these landfill diversion targets. It is intended to be the first of two consultations, with specific proposals being presented in the second consultation. At this stage we are seeking the views of stakeholders on the proposed approach in a number of areas to inform the further development of these proposals.

1.2 The revised approach to municipal waste is based on waste classified using the List of Wastes Decision1 (or the ‘European Waste Catalogue’). Chapter 20 of this catalogue can broadly be considered to equate to municipal waste. It is intended to also include parts of Chapter 19 (waste from treatment facilities) and Chapter 15 (packaging waste). This approach has been agreed with the European Commission and will bring the UK approach closer to that used in other Member States. It means that a much larger proportion of commercial and industrial waste is included within the definition, which is consistent with the increased focus Defra wants to place on this waste stream; and to bring greater convergence between the drivers to manage household and commercial waste further up the waste hierarchy so that the environmental impacts of waste are addressed regardless of its source.

1.3 This change will not mean that any additional waste is sent to landfill and is simply a change to the way municipal waste is classified. In addition it is not anticipated that the revised approach will, in itself, alter the current responsibilities and arrangements for managing this waste. Whereas previously municipal waste only applied to waste managed by local authorities it will now extend to cover waste managed by private sector waste management companies. Local authority obligations to manage waste will not be amended to cover the ‘new’ waste being included in the scope of municipal waste for the first time. They will continue to manage household waste, and commercial and industrial waste when requested. The vast majority of commercial and industrial is managed by the private sector and we do not expect this to change. It is not the intention through the reclassification of municipal waste to significantly change the existing management arrangements.

1.4 However, changing the way municipal waste is counted means that the baseline upon which the landfill diversion targets were set has to be revised, and therefore also the targets for the UK. Defra has agreed revisions to these targets with the European Commission, which broadly double the existing targets. Defra’s provisional assessment is that the UK’s progress towards meeting the new targets is similar to the previous approach; that is we are confident of meeting the 2010 target but further progress is needed to meet the 2013 and 2020 targets.

---

1.5 The requirements set in the Landfill Directive are at a UK level and the revised definition and targets will affect all four administrations of the UK. However, the overall UK target is apportioned to each of the four administrations. This consultation will address the specific implications for England to meet and report on its share of the UK target. In developing the revised UK approach, and this consultation, Defra has worked closely with the administrations in Wales, Scotland and Northern Ireland. As we take forward work following this consultation we will continue to work closely with the other administrations, including considering the advantages of a consistent approach across the UK.

1.6 To ensure that Defra can report robust, credible data to the European Commission on the revised amount of biodegradable municipal waste being sent to landfill in England it is necessary to review the reporting and monitoring obligations currently in place, and if necessary, consider additional measures. A number of possible approaches have been considered in discussion with the Environment Agency and the Devolved Administrations, and stakeholder views are sought on the approaches outlined.

1.7 The revision to the UK’s approach provides an opportunity to review the range of policies in place to ensure that England meets the targets set. To meet the previous approach to the targets the Landfill Allowance Trading Scheme (LATS) was introduced in England. It is not proposed to extend the coverage of LATS to cover the revised totality of municipal waste; it will continue to apply to waste collected by local authorities. Similarly this consultation proposes that the level of allowances issued to local authorities is not changed. However, the revision to the targets provides the opportunity to review the ongoing effectiveness of this scheme, particularly against the changed context of other existing, and potentially new, policies in place to divert biodegradable waste from landfill since LATS was introduced.

1.8 The accompanying Impact Assessment to this consultation presents a case that, based on our provisional assessment, England is likely to meet all the landfill diversion targets based on existing policies, most notably planned increases to landfill tax and LATS. This indicates that no additional measures, above and beyond those already in place, are necessary to meet the targets. Further work is necessary to confirm this provisional assessment. In addition, separate to this consultation measures to transpose the revised Waste Framework Directive are being developed and the possibility of landfill restrictions for certain waste types are being consulted upon which could significantly impact on the amount of biodegradable waste being sent to landfill. The Consultation on the introduction of restrictions on the landfilling of certain wastes is available on the Defra website www.defra.gov.uk/corporate/consult/landfill-restrictions/index.htm. In this context stakeholder views are sought on the most effective combination of policies Defra should pursue, that address both the local authority and private sector elements of municipal waste, to provide the necessary confidence that England meets its targets. This will shape further work Defra intend to conduct to assess the impact of existing policies to divert biodegradable waste from landfill ahead of the planned second consultation.

1.9 The revised approach to the landfill diversion targets also requires that some changes are made to the relevant legislation to reflect this, the Waste and Emissions Trading Act 2003, the Landfill Allowance Trading Regulations
2004, and the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 ("Targets Regulations"). The key changes necessary are outlined in this consultation and stakeholder views are sought on the proposed approach. Defra’s intention is to present specific proposals for one set of consolidated legislative changes in the planned second stage consultation.

1.10 Municipal waste is a commonly used concept in waste management in the UK. This consultation focuses on the interpretation of municipal waste used in relation to the Landfill Directive. However, the term municipal waste is used in a wide array of other contexts. In taking forward this issue Defra intend to consider these other uses and amend them as necessary.
Consultation Questions

Reporting and Monitoring Obligations (paragraphs 3.14 to 3.24)

Q.1: Which of the possible approaches to reporting on the amount of Biodegradable Municipal Waste (BMW) sent to landfill should Defra develop further? Is it right to favour measuring a landfill target at the point of landfill, provided a robust and credible method can be determined?

Q.2: Are there alternative approaches that Defra should be considering?

Q.3: Is the current guidance on classifying waste by the List of Wastes sufficient for ensuring that waste is correctly identified against European Waste Catalogue code, and hence whether it is municipal waste or not?

Policies to divert biodegradable waste from landfill - Section 4

Q.4: Do you consider that LATS is an effective policy to assist England meet its share of the UK landfill diversion target in:

   a) 2013
   b) 2020

Please provide evidence to support your views if possible. In particular it would be useful to know the role LATS plays in future planning by local authorities to divert waste from landfill.

Q.5: What policy instruments should Defra consider in its assessment of those necessary to meet the landfill diversion targets in 2013 and 2020? Please provide evidence to support your response if possible.

Q.6: Are there other policy options specifically to divert biodegradable municipal waste from landfill that Defra should be considering?

Amending the existing legislation - Section 5

Q.7: Do you agree with the proposal to create the concept of “Collected Waste” as a means of LATS continuing in its current form as a policy addressing waste collected by local authorities.

Q.8: Is “Collected Waste” the best term, or is there a better alternative?

Q.9: Do you agree that allocations of landfill allowances to Waste Disposal Authorities should be retained as currently allocated for each LATS scheme year?

Q.10: Do you think targets for BMW to landfill should be set in non-target years, and if so, on what basis?
2. **Background and context**

2.1 The Landfill Directive (1999/31/EC) sets challenging targets for Member States to reduce the amount of biodegradable municipal waste sent to landfill. This was in line with its overall objective to prevent or reduce as far as possible the negative effects of landfilling on the environment, including reducing the production of methane gas from landfills, as well as any resultant risk to human health. The Directive includes a definition of municipal waste (Article 2) as

> waste from households, as well as other waste which, because of its nature or composition, is similar to waste from households.

It defines ‘biodegradable waste’ as

> any waste that is capable of undergoing anaerobic or aerobic decomposition, such as food and garden waste, and paper and paperboard.

2.2 These definitions are used as the basis for the landfill diversion targets included in Article 5(2) of the Directive. The UK’s targets are to reduce the amount of biodegradable municipal waste (BMW) sent to landfill to:

- 75% of the total amount produced in 1995 by 2010
- 50% of the total amount produced in 1995 by 2013
- 35% of the total amount produced in 1995 by 2020

Member States may be subject to penalties from the European Commission if they fail to meet their targets.

2.3 These targets were transposed into UK legislation with the Waste and Emissions Trading Act 2003 (WET Act). This legislation also provided the legal basis for landfill allowance schemes in each of the four administrations in the UK. These schemes were established as the primary means for ensuring that the UK as a whole met the Directive targets.

2.4 The definition of municipal waste set out in the Directive was included in the WET Act. However, in further developing the landfill allowance schemes it was felt necessary to provide greater clarity to the definition of municipal waste. In doing so municipal waste was in practice defined as waste that is under the possession or control of local authorities, and the landfill allowance schemes were established to apply to local authorities only.

2.5 The landfill allowance schemes have proven effective in influencing local authorities to take action to divert biodegradable waste from landfill. This has been through a combination of waste prevention measures, increasing recycling and composting, and investing in waste treatment facilities. Since the introduction of the Landfill Allowance Trading Scheme (LATS) in 2005/06 in England, and in combination with other policies, the recycling rate for waste collected by local authorities has risen from 26.7% to 36.9% in 2008/09. In addition the amount of biodegradable waste sent to landfill by Waste Disposal Authorities (WDAs) has fallen by 25% over the same period.
2.6 The Environment Agency published its report on the 2008/09 scheme year in December 2009. This showed that 9.3m tonnes of biodegradable waste was landfilled by local authorities in England. This is 1.9m tonnes less than the scheme maximum for 2010, and only 1.8m tonnes more than the 2013 scheme maximum. This would suggest that the scheme, combined with other measures, has been an effective driver on local authority behaviour to divert biodegradable waste from landfill to date.

2.7 However, discussions with the European Commission over the last year have led us to agree that the UK’s existing approach is focused too narrowly on waste collected by local authorities; that this approach focuses on too small a subset of the totality of waste produced and that the environmental objectives of the Directive to reduce the negative effects of landfilling would be better addressed by a broader definition. This is consistent with the increased focus we want to place on commercial and industrial waste; and to bring greater convergence between the management of household and commercial waste so that the environmental impacts of waste are addressed regardless of its source.

2.8 This consultation addresses the changes necessary to enable the UK to report to the European Commission on a revised approach to the landfill diversion targets included within the Directive. This includes setting out the new interpretation of the definition; revisions to the 1995 baseline and targets; and the reporting and monitoring obligations necessary to enable robust reporting against the targets to the European Commission. It also highlights the potential implications for domestic policy instruments to divert biodegradable waste from landfill. However, further evidence gathering and analysis is necessary before firm proposals can be made on the instruments considered necessary to ensure that the targets are met.

2.9 The requirements set in the Landfill Directive are at a UK level and the new interpretation of the definition and revised targets will affect all four administrations of the UK. However, the overall UK target is apportioned to each of the four administrations. This consultation will address the reporting and monitoring obligations for England, and the policy instruments necessary for England to meet its share of the UK target. In developing the revised UK approach, and this consultation, Defra has worked closely with the administrations in Wales, Scotland and Northern Ireland. As we take forward work following this consultation we will continue to work closely with the other administrations.

2 http://www.environment-agency.gov.uk/business/topics/waste/38989.aspx
3. **The UK’s revised approach to reporting against the Landfill Diversion targets.**

3.1 The Government is changing the approach the UK takes to calculating the targets on reducing the amount of biodegradable municipal waste sent to landfill included in the Landfill Directive. The revised approach will include much more waste than currently and will bring the UK approach more closely into line with the approach adopted by a number of other Member States.

3.2 This change will not mean that any additional waste is sent to landfill and is simply a change to the way waste is classified. However, changing the way municipal waste is counted will mean changing the baseline on which the landfill diversion targets were set and thus the targets for the UK.

**The revised approach to the definition of biodegradable municipal waste**

3.3 The new interpretation of municipal waste is based on the classification of waste using the List of Wastes Decision\(^3\) (or the ‘European Waste Catalogue’ as it will be referred to in this consultation). Chapter 20 of this catalogue can broadly be considered to equate to municipal waste – the Chapter is headed “Municipal Wastes (household waste and similar commercial, industrial and institutional wastes) including separately collected fractions”.

3.4 In discussions with the European Commission they have made clear that this is their preferred approach to classifying municipal waste. From our own engagement with other Member States, and from information from the European Commission, we understand that this approach is used in a number of other Member States.

3.5 After considering what an approach based on Chapter 20 of the European Waste Catalogue (EWC) would mean, including reviewing recent data, it has been decided to broaden the definition of municipal waste further. We propose to also include some waste that is coded under Chapter 19 within the definition. Chapter 19 covers waste from waste management facilities, and for example, we consider biodegradable waste classified under sub-section 12 landfilled following mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) should be included. By including waste coded under this section we can ensure that municipal waste landfilled following some forms of treatment process, such as Mechanical Biological Treatment, but which contains biodegradable content, is captured.

3.6 In addition it is our view that some waste coded under Chapter 15 should also be included. This chapter covers waste packaging. Sub section 15 01 specifically covers packaging (including separately collected municipal packaging waste). Therefore, it is appropriate to include some waste coded under this sub section in the definition of municipal waste. Our view is that

---

\(^3\) Commission Decision 2000/532/EC, as amended, most recently by Council Decision 2001/573/EC
waste coded under 15 01 01 to 15 01 09 (excluding 15 01 03 and 15 01 04) should be included.

3.7 It is worth noting that this approach does not include construction and demolition waste, which would be recorded under a different chapter of the EWC, within municipal waste. This is consistent with the outcome of the consultation on the definition of municipal waste conducted in 2007 by Defra. Subsequent to that consultation it was Defra’s intention to clarify that construction and demolition waste separately collected by local authorities should not be included within municipal waste.

Table 1 – Revised approach to municipal waste using European Waste Catalogue codes

<table>
<thead>
<tr>
<th>Revised approach to municipal waste</th>
<th>Codes included</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 20</td>
<td>All codes</td>
<td>Chapter is titled “municipal waste” and is the basis for the revised approach to municipal waste following discussions with the European Commission</td>
</tr>
<tr>
<td>Chapter 19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19 12</td>
<td></td>
<td>This sub-section covers wastes from the mechanical treatment of waste. An analysis of the data shows an increasing amount of waste being classified as chapter 19 in recent years, and almost exclusively 19 12 as more pre-treatment/sorting of waste is carried out and more treatment infrastructure is built. This corresponds with a largely equivalent fall in waste being coded under Chapter 20 over the same time period. Therefore, the assumption in including this code, supported by the views of the four administrations of the UK is that material being landfilled under this code is substantially municipal in origin.</td>
</tr>
<tr>
<td>19 05 &amp; 19 06</td>
<td></td>
<td>These two sub-sections cover the aerobic and anaerobic treatment of waste. Historically only very small amounts of waste have been coded against these sub-sections. However, going forward it is considered that these codes may become increasingly relevant. The intention is to include these codes on the assumption that the bio-waste being sent for these treatments will be predominantly, if not entirely, municipal in origin.</td>
</tr>
<tr>
<td>Chapter 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15 01 01/02 &amp; 15 01 05 to 15 01 09</td>
<td></td>
<td>This sub-section concerns packaging waste, including separately collected municipal packaging waste. The codes within 15 01 for specific packaging materials waste that is considered to be municipal have been included. These are paper, cardboard, plastic, glass, textile, composite and mixed.</td>
</tr>
</tbody>
</table>
3.8 After consideration of the possible alternatives Defra consider that the approach outlined above provides an interpretation of municipal waste that is consistent with the definition set out in the Landfill Directive. This has been confirmed in discussions with the European Commission. It is also consistent with our aim of reducing the damaging emissions of methane from landfillsing biodegradable waste regardless of the source of the waste.

**Impact on the baseline and the landfill diversion targets for the UK**

3.9 Revising the interpretation of municipal waste as outlined above will mean that the amount of waste classified as municipal waste will increase significantly. As a result Defra have agreed with the European Commission that the UK’s targets to reduce the amount of biodegradable municipal waste (BMW) sent to landfill need to be revised. The targets in the Directive are based on proportions of a baseline 1995 figure of BMW produced. This figure needs to be revised and this will directly impact on the tonnage targets that the UK is required to meet in the target years of 2010/2013/2020.

3.10 However, the historical data set back to 1995 is not complete for the new approach to interpreting municipal waste. A waste survey was conducted in Scotland around this time which has meant Scotland have relevant data for this period which they have been able to use. However, for England, Wales and Northern Ireland some modelling of the available data to estimate a 1995 baseline of municipal waste arisings for the relevant EWC codes has been required.

3.11 For household waste we have a robust, historic data set via WasteDataFlow and its predecessor surveys. The available data for commercial and industrial waste is not as comprehensive. Surveys were
conducted in particular years, 1998/9 and 2002/03, and Waste Statistics Regulation returns were made in 2004 and 2006 to the European Commission. This available data for commercial and industrial waste has been analysed to identify the proportion of total C&I waste that should be apportioned to the relevant EWC codes for municipal waste under the revised approach. In each year for which an assessment of the tonnage of C&I waste that is municipal is available this has been added to known tonnage of household waste to produce a total figure for municipal waste arisings under the revised approach. These data points have been used to calculate a regression to estimate a 1995 baseline of biodegradable municipal waste arisings for England, Wales and Northern Ireland. This has then been combined with the data for Scotland to produce a UK figure.

3.12 In discussing any potential change to the UK’s approach with the European Commission the incompleteness of the available data stretching back to 1995 was highlighted at an early stage. The European Commission have known and accepted that the limitations in the available data would require a degree of modelling to be carried out to produce a revised baseline for the landfill diversion targets. We have shared our modelling work with them, and they have confirmed the acceptability of the approach we have used and the modelled baseline.

3.13 As a result the changes shown in the table below have been made to the UK targets, and to those of each administration within the UK, to reduce BMW to landfill. The previous targets have approximately doubled as a result.

Table 2 – Previous and New Landfill Diversion Targets

<table>
<thead>
<tr>
<th>Landfill Diversion Targets ('000 tonnes)</th>
<th>2010</th>
<th>2013</th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Previous Targets</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>England</td>
<td>11,200</td>
<td>7,460</td>
<td>5,220</td>
</tr>
<tr>
<td>Scotland</td>
<td>1,320</td>
<td>880</td>
<td>620</td>
</tr>
<tr>
<td>Wales</td>
<td>710</td>
<td>470</td>
<td>330</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>470</td>
<td>320</td>
<td>220</td>
</tr>
<tr>
<td>UK</td>
<td>13,700</td>
<td>9,130</td>
<td>6,390</td>
</tr>
<tr>
<td><strong>New Targets</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>England</td>
<td>21,773</td>
<td>14,515</td>
<td>10,161</td>
</tr>
<tr>
<td>Scotland</td>
<td>2,697</td>
<td>1,798</td>
<td>1,258</td>
</tr>
<tr>
<td>Wales</td>
<td>1,378</td>
<td>919</td>
<td>643</td>
</tr>
<tr>
<td>Northern Ireland</td>
<td>919</td>
<td>612</td>
<td>429</td>
</tr>
<tr>
<td>UK</td>
<td>26,766</td>
<td>17,844</td>
<td>12,491</td>
</tr>
</tbody>
</table>
Impact on reporting obligations in England

3.14 The preceding sections have concerned changing the approach to meeting the landfill diversion targets at a UK level. The following sections concern England only. In addition this section focuses on what is required to be able to report on the landfill diversion targets, on the basis of the revised approach to municipal waste, to the European Commission. Although clearly linked under the previous approach this will be a different to the reporting regime in place for LATS.

3.15 To ensure that Defra can report robust, credible data to the European Commission on the amount of BMW being sent to landfill in England we need to review the reporting obligations currently in place, and if necessary, consider additional measures. A number of possible approaches have been considered in discussion with the Environment Agency and the Devolved Administrations. They are presented in outline below and require further thinking and development. Monitoring and reporting may require a mix of options, or variations on the ideas presented here.

3.16 The existing approach to reporting for LATS is a ‘mass balance’ approach based on data reported by local authorities through WasteDataFlow. This approach is based on an assumed biodegradable content of municipal waste collected, with deductions being made for biodegradable waste diverted via alternative management methods prior to landfill, to leave a calculated figure for BMW landfilled. This approach could be extended, to a greater or lesser extent, to the new coverage of municipal waste. This option would require additional monitoring and reporting on municipal waste managed by the private sector, and an addition to the existing administrative system to manage these returns. The extent of additional effort would depend on the nature of the option chosen and the use that could be made of existing systems, such as the waste input returns made by waste operators to the Environment Agency. Issues that would need resolving include who in the waste management chain to place this additional reporting obligation upon (for example waste producers or waste management facilities); the level of detail required in reports; and the most appropriate form of compliance monitoring. Further work is needed to consider how this approach would work in practice and the additional reporting and monitoring obligations considered necessary.

3.17 Alternatively BMW to landfill could be measured at the point of landfill. Given that we are concerned with a target at the point of landfill there is a certain attractiveness to the logic of such an approach. Under the LATS Regulations landfill operators are already required to keep records and report to Environment Agency on municipal waste landfilled. This covers waste sent to a landfill by a Waste Disposal Authority, and must be coded using the six digit European Waste Catalogue.

3.18 More generally the European Waste Catalogue is used to code waste for Waste Transfer Notes and returns made to the Environment Agency on the waste received at their site by waste operators under environmental permit conditions. Returns for most waste facilities, including landfill, are made quarterly. Therefore, use of the codes is well established within the waste management sector. This would include reporting to the Environment Agency from landfill operators on the amount of waste received at landfill from the EWC codes included in the new definition of municipal waste. In addition the
Environment Agency provides guidance “Using the List of Wastes to code waste”4 to aid consistency of reporting.

3.19 Therefore, there is an existing reporting mechanism in place on waste sent to landfill, coded using the EWC. However, to enable reporting against the targets we must be able to identify from these returns the amount of BMW landfilled. In order to do this the tonnage of waste landfilled against the specific EWC codes that are included within municipal waste must be identified. Furthermore, we must know the biodegradable content of each of these types of waste. As the vast majority of relevant EWC codes are material specific these are relatively straightforward, the material landfilled will either be biodegradable or not. However, there are a small number of ‘mixed’ codes under which a disproportionately large amount of waste is landfilled. Assessment of the biodegradable content of the waste landfilled under these codes will be crucial to understanding the amount of BMW landfilled.

3.20 This assessment of the biodegradable content could be done by Defra and the Environment Agency through sample monitoring of material landfilled under the mixed codes. Alternatives to this could be that an obligation is placed on the landfill operator to make an assessment of the biodegradable content of mixed waste they receive, perhaps through inspection of loads received or some form of sample monitoring. Or the obligation could be extended to non-landfill operators such as operators of Material Recycling Facilities, Mechanical Biological Treatment facilities, or transfer stations to assess and report on the amount of BMW they send to landfill.

3.21 Defra provisionally favours measuring BMW to landfill based on returns made by landfill operators, as coded by European Waste Catalogue code, with an assessment of the biodegradable content made by Defra and the Environment Agency. However, this is a new use for this existing data and is dependent on further work to confirm that this will produce robust and credible data, in particular to assess the biodegradable content of mixed waste. Initial assumptions have been made for the purposes of providing a provisional assessment of England’s position against the landfill diversion targets (see paragraph 4.6). However, compositional analysis of this mixed waste at landfill and some ongoing monitoring of waste at landfill is likely to be necessary to provide the required reassurance about the robustness of the data.

3.22 Therefore, the approach that Defra provisionally favours to data reporting on the amount of BMW sent to landfill means that we do not envisage this placing any additional burden on top of existing reporting obligations, since the information is already included in returns made to the Environment Agency.

3.23 An alternative approach may be to consider some form of transitional, or composite, reporting. This would take as its basis the existing reporting process for calculating biodegradable municipal waste sent to landfill via local authorities using WasteDataFlow (WDF) and the mass balance approach. The ‘new’ biodegradable municipal waste sent to landfill by the private sector would be calculated by an additional separate reporting system. This would most obviously be to use landfill operator return data if possible.

---

3.24 Regardless of changes to the reporting approach for the landfill diversion targets Defra intend to retain WasteDataFlow. This is a valuable source of data on waste managed by local authorities. Not only is the data a very useful source of information in itself but the data would serve other, defined policy needs. For example WDF is the officially designated source of data for reporting against the three waste related National Indicators within the Local Government Performance Framework. Furthermore, we anticipate WDF being used as a source of data in relation to the target in the revised Waste Framework Directive to recycle 50% of household waste, and possibly waste from other origins similar to household waste.

Q.1: Which of the possible approaches to reporting on the amount of BMW sent to landfill should Defra develop further? Is it right to favour measuring a landfill target at the point of landfill, provided a robust and credible method can be determined?

Q.2: Are there alternative approaches that Defra should be considering?

Q.3: Is the current guidance on classifying waste by the List of Wastes sufficient for ensuring that waste is correctly identified against EWC code, and hence whether it is municipal waste or not?

Impact on monitoring obligations in England

3.25 The amount of biodegradable municipal waste sent to landfill needs to be effectively monitored to ensure that the UK is able to provide the Commission with robust evidence of its compliance with the requirements of the Landfill Directive.

3.26 The existing legislation, section 10 of the WET Act, requires a monitoring authority to be appointed to, amongst other things, monitor how much biodegradable municipal waste is sent to landfill by authorities as an aspect of the monitoring of the provisions relating to landfill allowances. In England the current monitoring authority is the Environment Agency. However, in revising the interpretation of the definition of municipal waste it is necessary to consider what changes are needed to the current monitoring arrangements.

3.27 Defra proposes that for England the Environment Agency should continue to be the monitoring authority. The Agency already carries out the role, and in addition has a role in monitoring data reported at landfill sites that should be classified against the EWC codes. Therefore, we are proposing to amend the responsibilities of the Environment Agency to reflect the revised approach to reporting against the landfill diversion targets. Defra and the Agency have had initial discussions on the changed role and will continue to work together to develop the precise arrangements necessary. These will obviously be dependent on the approach to reporting taken forward.
4. England’s approach to meeting the landfill diversion targets

4.1 The change to the UK’s approach provides an opportunity to review the range of policies in place to ensure that the landfill diversion targets are met. This section of the consultation focuses on the policy measures in place in England to meet its share of the UK target. The Administrations in Wales, Scotland and Northern Ireland will consider the need to review the policies in place in their respective territories separately.

Approach to date in England

4.2 To meet the previous approach to the targets the Landfill Allowance Trading Scheme (LATS) was introduced in England. This scheme caps the total amount of biodegradable municipal waste that can be landfilled in any given scheme year, with allowances allocated to individual Waste Disposal Authorities (WDAs). The level of allowances allocated each year are set to reduce progressively at the rate necessary to meet their share of the previous UK target.

4.3 LATS has been an effective policy instrument influencing WDAs to take action to divert biodegradable waste from landfill. This has been through a combination of waste prevention measures, increasing recycling and composting, and investing in waste treatment facilities. Since the introduction of LATS in 2005/06 in England, and in combination with other policies, the recycling rate for waste collected by local authorities has risen from 26.7% to 36.9% in 2008/09. In addition the amount of biodegradable waste sent to landfill by WDAs has fallen by 25% over the same period.

4.4 This policy has incentivised many waste disposal authorities to invest in waste treatment infrastructure to secure capacity and to avoid the penalties arising from a failure to divert the required amount of biodegradable waste in the target years. To support the diversion of BMW from landfill in England the Government has provided financial support to waste disposal authorities building such waste treatment infrastructure through Private Finance Initiative (PFI) credits. This support covers an element of the capital investment but not any ongoing costs in paying for provision of the treatment service itself. To date £2.6 billion has been committed to 38 projects, which will significantly increase the capacity available. In revising the UK’s approach to municipal waste we have considered the impact on this programme of investment. But it remains the case that investment to divert waste from landfill is absolutely essential to meet the landfill directive targets, irrespective of whether this is driven by LATS or not.

Assessment of progress against revised targets.

4.5 The Environment Agency report on the 2008/09 LATS scheme year showed that England landfilled less in that year than the previous 2010 target and that good progress was being made towards the 2013 target. A provisional assessment of England’s position against the new targets, using the new interpretation of municipal waste, has been carried out. This suggests that England is in a similar position in relation to its targets under the new
approach; that is less BMW was landfilled in 2008 than the 2010 target, and that good progress was being made towards the 2013 target.

4.6 Clearly the approach to reporting taken has the capacity to influence the exact calculation of BMW landfilled and therefore this assessment is only provisional at the moment. As outlined in the section on reporting (see paragraph 3.14 to 3.24) this assessment is based upon the approach that Defra provisionally favours using returns made by landfill operators of waste landfilled by EWC code. From this data the total amount of biodegradable municipal waste sent to landfill has been calculated. For most of the relevant EWC codes it is straightforward to determine the biodegradable content as they are material specific. However, for a small number of codes assumptions must be made about the biodegradable content. This is of most relevance for EWC code 20 03 01 “mixed municipal waste” under which a significant proportion of the total municipal tonnage is coded. In the absence of detailed compositional analysis of mixed municipal waste at landfill the existing assumption about the biodegradable content of mixed waste collected by local authorities, 68%, has been used.

4.7 This is considered the best available proxy. However, it relies on some large assumptions: that the biodegradable content of the ‘new’ waste being included in municipal waste is similar to that already included; and that the biodegradability of waste landfilled is the same as waste collected meaning that biodegradable and non-biodegradable mixed municipal waste is diverted from waste at similar rates to leave the overall biodegradable mix at the same proportion. These are not considered implausible assumptions, but they are clearly substantial assumptions. There is some evidence to support this assumption. Analysis of the data reported under LATS suggests that the biodegradable content of waste landfilled is similar to the biodegradable content of waste arisings. In addition analysis of the biodegradable content of mixed commercial and industrial waste landfilled in Wales conducted in 2007 indicated that the biodegradable content was similar to that of municipal waste arisings. Given the importance of this assumption to the proposed approach of determining the amount of BMW landfilled further work is necessary to improve our understanding of the biodegradable content of mixed municipal waste at landfill.

4.8 The following table presents our assessment of BMW landfilled in 2008, under the revised approach to municipal waste and based on our provisional approach to reporting, for a range of assumptions for the biodegradable content of “mixed municipal waste” (EWC Code 20 03 01). The 2013 target for England has been included for reference.

### Table 3

<table>
<thead>
<tr>
<th>% Assumption</th>
<th>58%</th>
<th>63%</th>
<th>68%</th>
<th>73%</th>
<th>78%</th>
<th>2013 Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>BMW to landfill</td>
<td>13,727</td>
<td>14,385</td>
<td>15,044</td>
<td>15,703</td>
<td>16,361</td>
<td>14,515</td>
</tr>
</tbody>
</table>

4.9 For the central assumption of 68%, England landfilled significantly less than the 2010 target in 2008; a further 529,000 tonnes of BMW would have to be diverted from landfill above and beyond current levels to have met the 2013 target, and 4,883,000 tonnes to meet the 2020 target. However, as shown by the table this position could change significantly depending on the accuracy of the assumption about the biodegradable content of mixed municipal waste.

4.10 Therefore, this assessment must be treated with a great deal of caution. This is not only due to the significant assumption made about biodegradable content but also the fact that the data is a snapshot of the picture in 2008. This does not take into account any change in waste arisings between 2008 and the target years, and in relation to this it is worth noting that arisings in 2008 were likely to be affected by the onset of the economic downturn.

4.11 As set out earlier in this section Defra intends to conduct work to assess the assumed biodegradable content of mixed municipal waste. In addition Defra intends to conduct further analysis of the prospects for meeting the 2013/20 targets. This will be informed by work being taken forward elsewhere. The planned survey of Commercial and Industrial waste arisings in 2009 will provide an up to date assessment of waste arisings and management. In addition to this the Environment Agency are initiating a project to draw together information on waste infrastructure, both local authority funded and merchant plants. Both these pieces of work will report later this year. They will enable Defra to produce a more robust assessment of England’s prospects for meeting the landfill diversion targets.

**Overview of policies to divert biodegradable waste from landfill**

4.12 In order to avoid missing the targets and the possibility of significant financial penalties from the European Commission Defra must have confidence that England will divert sufficient BMW from landfill in order to meet its share of the UK target. The policies in place must provide this confidence. The accompanying Impact Assessment presents a case that, based on our provisional assessment of the current position and central assumptions going forward, England is likely to meet all the landfill diversion targets based on existing policies. The existing policies in question are primarily planned increases to landfill tax and LATS. Subject to the assumptions and caveats in this assessment this indicates that no additional measures, above and beyond those already in place, are necessary to meet the targets. However, as set out in the previous section further work is needed to develop a more robust assessment to provide sufficient confidence in this scenario.

4.13 Subject to the further assessment outlined above the revision to the targets provides the opportunity to review the ongoing effectiveness of existing policies, in particular LATS. In addition, separate to this consultation the possibility of landfill restrictions for certain waste types are being consulted upon and later this year measures to transpose the revised Waste Framework Directive will be consulted upon which could significantly impact on the amount of biodegradable waste being sent to landfill.
4.14 In this context stakeholder views are sought on the most effective combination of policies, that address both the local authority and private sector elements of municipal waste, to provide the necessary confidence that England meets its targets. The relevant policies and the potential issues are set out below and we would appreciate stakeholder views, supported by evidence where possible, on the policy instruments we should consider going forward. This will shape further work Defra intend to conduct to assess the impact of existing policies to divert biodegradable waste from landfill ahead of the planned second consultation. Therefore, this consultation is not proposing specific changes to existing policies, or proposing additional policies. In considering the range of options Defra have worked closely with colleagues in the Devolved Administrations. In assessing the responses to this consultation we will continue to work with colleagues in the Devolved Administrations to consider the advantages of a consistent approach across the UK.

Existing policies to divert biodegradable waste from landfill

Landfill Allowance Trading Scheme

4.15 The primary tool to ensure England meets its share of the UK target under the previous interpretation of municipal waste is the Landfill Allowance Trading Scheme. As noted earlier this appears to have been effective in driving action by local authorities to divert biodegradable waste from landfill. However, the direct link between the LATS allocations and the landfill diversion targets has been broken by the revised approach to municipal waste. This was a key reason for setting up the scheme and means that the landfill allowance scheme, as currently formulated, will only address approximately half of the new municipal waste stream. This means that we need to review the relevance and usefulness of LATS for the future.

4.16 It may be that in order to meet the landfill diversion targets it is necessary to retain LATS as a specific driver on local authorities, some of which have already made a significant financial investment in infrastructure as a result. By continuing the scheme it would provide reassurance that the proportion of BMW waste managed by local authorities would be diverted from landfill at the necessary rate to meet the larger targets.

4.17 However, as LATS will no longer be a tool to specifically address the whole of the new interpretation of municipal waste it could be argued that retaining it to do part of the task, particularly if other tools are available, is not a sensible approach. It places an additional burden on local authorities, which is not placed on the private sector. In addition the current operation of the scheme has provided some unwanted outcomes. For example the scheme is perceived as a barrier for local authorities to collect additional commercial waste, from SMEs for example, should that be a service that the authority wishes to provide.

4.18 As a result of changing the UK’s approach to the landfill diversion targets there are changes to the legislation that underpins LATS to maintain the scheme that Defra considers are necessary (See Section 5). Therefore, there is no ‘do nothing’ option. The revised approach to municipal waste provides an opportunity to review the effectiveness of the policy and its ongoing value to meet the new targets. Given LATS’s specific role in meeting
the landfill diversion targets Defra’s appraisal will focus on the scheme’s ongoing role in ensuring that the 2013 and 2020 targets are met. This will inform the second stage consultation. To assist in framing that appraisal we are seeking views, and evidence, on the role LATS has played in diverting biodegradable waste from landfill, and will continue to play through to 2020 from stakeholders.

Other Existing Policies

4.19 Since LATS was introduced in 2005/06 there have been significant developments in fiscal instruments and other incentives to divert waste from landfill, most notably landfill tax. In 2005/06 the tax was set at £18, and rising at £3 per year. Subsequent to that the escalator was increased to £8 per year, with the tax reaching £40 in 09/10, and set to rise by £8 per year to £72 in 2013/14. Discussions with local authorities suggest that landfill tax is becoming an ever more significant driver on local authority plans to divert waste from landfill, and as the level of tax continues to rise this trend can be anticipated to become more pronounced. In addition it is a policy driver that also impacts on private sector waste management so will address both the existing, and ‘new’, components of municipal waste.

4.20 In addition there are a range of existing, and future, initiatives on waste prevention, re-use and recycling, either driven by the desire to avoid landfill tax or for other reasons that will all contribute to diverting biodegradable waste from landfill. For example the Courtauld Commitment, and the “Love Food, Hate Waste” campaign will influence the amount of biodegradable waste produced. WRAP has provided financial support, through the Organics Capital Grant Programme, for commercial composting operations to increase available capacity, while at the other end of the scale they are continuing to encourage the take up of home composting. Furthermore, we are encouraging the take up of energy recovery from waste. For example it can be anticipated that the Renewable Obligation Certificates system will drive progress in the provision of waste treatment capacity to further divert waste from landfill. It provides support for electricity generation from renewable sources including waste. The recent reforms made by Department of Energy and Climate Change to this system provide greater support to Anaerobic Digestion, increase investor certainty (e.g. by extending the lifetime of the scheme until 2037) and remove barriers to the burning of secondary recovered fuel (a type of processed waste) at co-firing stations.

4.21 In assessing the ongoing effectiveness of LATS, as set out above, Defra will also need to consider the context of other existing policies to divert biodegradable waste from landfill going forward, most notably landfill tax. This will inform consideration of the most effective combination of policies necessary to ensure that England meets its share of the UK targets.

Potential future policies to divert biodegradable waste from landfill

Additional Landfill Restrictions

4.22 Policy options that might be introduced that will impact on the amount of BMW sent to landfill are already under consideration. In parallel to this consultation is a separate consultation on the possible introduction of
additional landfill restrictions. The options being considered for a range of waste types are:

- Do nothing;
- Introduce landfill restrictions either a) on their own or b) accompanied by a requirement to sort;
- Introduce a sorting or tougher pre-treatment requirement but without a landfill ban; and
- Introduce producer responsibility systems linked to recycling targets.

4.23 The range of waste types being considered for landfill restrictions include paper/card, food, garden waste, wood, or all biodegradable waste amongst others. Non-biodegradable metals, glass and plastics are also being considered. Clearly the introduction of landfill restrictions on any of these biodegradable waste types would have a significant impact on meeting the landfill diversion targets. However, research supporting the landfill restrictions consultation notes that it would be difficult to implement landfill restrictions in less than five years, particularly in the case of waste types such as food, wood and garden waste where they would rely significantly on treatment infrastructure. In the case of biodegradables a lead-in time of 7-10 years is considered more appropriate because of the large amount of material covered and the time it takes to develop alternative infrastructure. Therefore, these options are likely to only be of relevance to the 2020 target, if at all.

4.24 However, it is worth noting that the primary objectives for considering landfill restrictions are much broader in that they will be assessed in terms of their contribution to reducing greenhouse gas emissions and promoting resource efficiency. Restrictions on certain waste types will not be introduced to specifically meet the landfill diversion targets, but if they are introduced they may well impact considerably on England’s progress towards the 2020 target, and views on the policies needed to meet the targets need to be considered in this context. Therefore, the question of whether landfill restrictions should be introduced is external to this consultation, and views specifically on this issue should be made in response to the landfill restrictions consultation. The Consultation on the introduction of restrictions on the landfilling of certain wastes is available on the Defra website.

Waste Framework Directive

4.25 There is also the potential for measures introduced as a means of implementing the Waste Framework Directive to have a substantial impact. For example the Directive includes requirements that the waste hierarchy should be applied as a priority; waste prevention programmes be introduced by 2013; a 50% recycling target on household waste by 2020; and separate collection of glass, plastic, paper and metal by 2015. Transposition of the Directive will be the subject of a further consultation Defra intends to publish in 2010. Again the specific measures introduced will not be in direct response to the changed landfill diversion targets but will have the potential to influence England’s ability to meet its targets.

Extending the scope of LATS

4.26 Waste Collection Authority obligations to collect waste could be amended to cover all of the new definition of municipal waste, and to extend LATS to cover all of this new waste. Although WCAs are already required to collect commercial waste, if requested by the producer of the waste, for a variety of reasons they collect a relatively small proportion of this waste stream and this would be a radical change in extent of their waste management responsibilities. In addition there are likely to be practical difficulties in adequately framing Waste Collection Authorities obligations in legislation to ensure all waste counted as municipal waste under the new approach, but only municipal waste, was captured. This is not an option that Defra is considering pursuing further.

4.27 Alternatively the coverage of LATS could be extended to cover all municipal waste, including that managed entirely by private sector waste management companies. However, there are likely to be significant practical difficulties in establishing which waste management operators should be covered by the scheme, who allowances should be given to, and at what level. Again this is not an option that Defra is considering pursuing further.

Consideration of options

4.28 As outlined above there are a range of policies in existence, and potentially forthcoming that will impact on the amount of biodegradable waste sent to landfill. Defra must ensure that it is confident that England will meet its share of the landfill diversion targets. To date this confidence has been provided by LATS, and it may be viewed as necessary to continue this scheme in some form through to 2020.

4.29 However, the range and scale of policies and technologies to divert biodegradable waste from landfill have changed considerably since LATS was introduced. The revised approach to municipal waste provides an opportune moment to review the future of LATS, and to consider the impact of range of other existing, and potential measures. Defra intend to gather evidence on the impact of existing policies to divert biodegradable waste from landfill to inform the second stage consultation. Stakeholder views are sought as part of this process, including any evidence you may have on the relative effectiveness of these policies, to shape Defra’s future work.

Q.4: Do you consider that LATS is an effective policy to assist England meet its share of the UK landfill diversion target in:

   a) 2013
   b) 2020

Please provide evidence to support your views if possible. In particular it would be useful to know the role LATS plays in future planning by local authorities to divert waste from landfill.

Q.5: What policy instruments should Defra consider in its assessment of those necessary to meet the landfill diversion targets in 2013 and 2020? Please provide evidence to support your response if possible.
Q.6: Are there other policy options specifically to divert biodegradable municipal waste from landfill that Defra should be considering?
5. **Amending existing legislation to report against the Landfill Diversion targets**

5.1 As a result of revising the UK interpretation of the definition of municipal waste and the landfill diversion targets there are some changes that will need to be made to the relevant domestic legislation that relates to these targets. These are the Waste and Emissions Trading Act 2003 ("WET Act") the Landfill Allowance Trading Regulations 2004 ("LATS Regulations"), and the Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 ("Targets Regulations"). The section below outlines Defra’s initial consideration of the changes that are necessary. In addition there are discretionary changes that could be made at the same time. For example amending the definition of waste included in LATS to clearly exclude separately collected construction and demolition waste (see paragraph 3.7). The changes necessary will in part also be dependent on the outcome of the assessment of which policies are necessary to ensure England meets its revised landfill diversion targets.

5.2 Defra’s intention is to present specific proposals for one set of consolidated legislative changes in the planned second stage consultation. To help inform the development of those proposals your views are sought on a number of the issues set out in this section.

**Definition of waste to be included in LATS**

5.3 If municipal waste is to be used going forward to relate to the subset of waste that is relevant to the Landfill Directive targets then it can no longer be used as the term to cover the subset of waste that is covered by LATS (on the assumption set out in Chapter 4 that LATS continues to apply to waste collected by local authorities only). An alternative term is required and the initial proposal is that the subset of waste to which LATS applies is referred to as local authority “collected waste”, as it essentially refers to waste collected by local authorities.

5.4 There are numerous references to ‘municipal waste’ (MW) and ‘biodegradable municipal waste’ (BMW) in both the WET Act and the LATS Regulations. Where the reference is to the Landfill Directive target these will remain unchanged. However, where the reference is to the LATS scheme these will need to be amended to ‘collected waste’ and ‘biodegradable collected waste’.

5.5 For example section 1 of the WET Act provide for the setting of maximum amounts of BMW that can be sent to landfill in respect of the UK, England, Scotland, Wales and Northern Ireland. These must be consistent with the UK's obligations for the diversion of BMW from landfill under Article 5(2) of the Landfill Directive. We are not proposing to amend this section because this continues to implement our EU obligations.

5.6 However, sections 11, 12 and 13 of the WET Act set out some of the powers allocating authorities have for making regulations dealing with landfill allowances. These powers have been used in England in relation to the LATS Regulations. As this regulation-making power will only be used in relation to LATS, which will address biodegradable collected waste, we propose
changing this so that it applies to biodegradable collected waste (BCW) rather than BMW. We propose to make a similar change in respect of the duty on WDAs to have regard to guidance on BMW, so that this will refer to guidance on BCW instead.

5.7 Section 21 of the WET Act provides the definitions of ‘biodegradable waste’, ‘municipal waste’ and ‘biodegradable municipal waste’. We are proposing to separate out those sections dealing with the Landfill Directive BMW targets from those relating to LATS on the basis of BCW and this will need to be reflected in the definitions included in this section. However, the definition of ‘biodegradable waste’ does not need to change and we are not proposing to change the definition of municipal waste as this corresponds to what is used in the Landfill Directive and will be the basis on which the BMW diversion targets are set under section 1 of the WET Act.

5.8 In a similar manner references to BMW in the LATS Regulations will need to be considered and amended if necessary. On this basis, separate references to ‘collected municipal waste’ should no longer be needed, as all the waste dealt with by LATS will be collected waste, so we propose to remove these.

Q.7: Do you agree with the proposal to create the concept of “Collected Waste” as a means of LATS continuing in its current form as a policy addressing waste collected by local authorities.

Q.8: Is “Collected Waste” the best term, or is there a better alternative?

References to targets

5.9 References in The Landfill (Scheme Year and Maximum Landfill Amount) Regulations 2004 (“Targets Regulations”) will need to be revised. These regulations set out the landfill targets for BMW, in accordance with the requirements of section 1(1) of the WET Act and in order to meet the requirements of the Landfill Directive. Therefore, they will continue to refer to BMW but the targets included in the Regulations will need to be amended to reflect the new targets.

Allocation of allowances

5.10 Section 4 of the WET Act deals with the allocation of allowances under LATS. We are proposing that LATS will only deal with BCW, but that allocating authorities will still be under a duty to ensure that the allowances they allocate do not authorise more BMW to be sent to landfills than is allowed under section 1 or 2. This will help ensure that BCW allocations are consistent with the BMW targets and that LATS continues to serve as a means of helping to meet the Directive targets to reduce BMW to landfill.

5.11 We would therefore amend section 4(1) of the WET Act so that allowances for BCW rather than BMW are issued but retain the duty in section 4(2) for allowances to be allocated in a way that is consistent with BMW targets. We are also proposing to amend section 4(4). This requires allocating authorities to publish statements explaining what allowances they have given and the basis for that allocation. The amendment would make it clear that this
explanation must include a reference to the duty not to exceed the BMW targets in section 4(2).

5.12 In practice we are not proposing to change either the total quantity of allowances issued, or the individual allocations to WDAs. Under the proposal to amend LATS to cover collected waste the total amount of waste covered by LATS will remain broadly the same. And this subset of waste will need to continue to be diverted from landfill at a rate comparable with the wider municipal waste targets to contribute its proportionate share of the reduction of BMW to landfill. In addition WDAs have known the current level of allocations since the outset of the scheme and there forward planning has been based on this level of allocations. Therefore, we are proposing that the fairest approach is to maintain the existing allocations of allowances for LATS.

Q.9: Do you agree that allocations of landfill allowances to Waste Disposal Authorities should be retained as currently allocated for each LATS scheme year?

Supplementary penalties

5.13 Under the LATS Regulations (regulation 20) authorities who exceed their allowances in a target year in which the UK also exceeds the maximum set by sections 2 and 3 of the WET Act are liable to a supplementary penalty. The level of the supplementary penalty is set by dividing any fine received from the European Court of Justice for breach of the Directive between WDAs, which have exceeded their allowance in proportion to the excess land filled.

5.14 Given the disconnect between the wider approach to municipal waste and the more limited notion of collected waste by local authorities the specific provision in regulation 20 will need to be removed. Further consideration will be given to the need for, and application of the provisions in 9(3) and (4) of the WET Act, which provides for supplementary penalties for WDAs where landfill allowances are exceeded and overall BMW targets are missed.

England targets in non-target years for the Landfill Directive

5.15 Section 2 of the WET Act allows the Secretary of State (with the agreement of the devolved administrations, where appropriate) to also set maximum amounts of BMW that can be sent to landfill in non-target years. The Target Regulations set out maximum amounts for the years 2005 to 2008.

5.16 Section 3 of the WET Act sets out a formula for working out what the BMW targets will be in those years where: (i) there is no target under the Landfill Directive for that year but there is for the following year; and (ii) the power in section 2 to specify BMW targets for non-target years has not been exercised.

5.17 We are considering whether we need to retain a mechanism for setting BMW targets outside Landfill Directive target years, given that the separate BCW targets will continue to be set on an annual basis through the allocation of allowances. Options include:
• exercising the section 2 powers to set targets for BMW in all non-target years, as is done now, meaning the formula section 3 would never be used;
• exercising the section 2 powers in some non-target years, in order to help determine whether the Directive BMW targets are likely to be met, and providing an opportunity for further steps to be taken;
• not exercising the section 2 powers and relying on the section 3 formula in applicable non-target years in either its current form or an amended form;
• not exercising the section 2 powers and removing section 3 so that targets would only be set for target years.

Q.10: Do you think targets for BMW to landfill should be set in non-target years, and if so, on what basis?

**Banking, Borrowing and Trading**

5.18 Regulation 9 of the Landfill Regulations allows the Secretary of State to suspend the banking, borrowing and transferring of allowances where there is a risk that the total amount of BMW sent to landfills in a non-target year exceeds the prescribed maximum amount. Whether we need to change this will depend on whether we set BMW landfill limits for non-target years (see section 5.6 above).

5.19 If we do specify BMW limits for non-target years, we propose to retain the powers in regulation 9 because this will still help to ensure that the movement of BCW allocations does not lead to problems in meeting the BMW targets.
List of consultation questions

Q.1: Which of the possible approaches to reporting on the amount of BMW sent to landfill should Defra develop further? Is it right to favour measuring a landfill target at the point of landfill, provided a robust and credible method can be determined?

Q.2: Are there alternative approaches that Defra should be considering?

Q.3: Is the current guidance on classifying waste by the List of Wastes sufficient for ensuring that waste is correctly identified against EWC code, and hence whether it is municipal waste or not?

Q.4: Do you consider that LATS is an effective policy to assist England meet its share of the UK landfill diversion target in:

   a) 2013
   b) 2020

Please provide evidence to support your views if possible. In particular it would be useful to know the role LATS plays in future planning by local authorities to divert waste from landfill.

Q.5: What policy instruments should Defra consider in its assessment of those necessary to meet the landfill diversion targets in 2013 and 2020? Please provide evidence to support your response if possible.

Q.6: Are there other policy options specifically to divert biodegradable municipal waste from landfill that Defra should be considering?

Q.7: Do you agree with the proposal to create the concept of “Collected Waste” as a means of LATS continuing in its current form as a policy addressing waste collected by local authorities.

Q.8: Is “Collected Waste” the best term, or is there a better alternative?

Q.9: Do you agree that allocations of landfill allowances to Waste Disposal Authorities should be retained as currently allocated for each LATS scheme year?

Q.10: Do you think targets for BMW to landfill should be set in non-target years, and if so, on what basis?
### Glossary of abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BCW</td>
<td>Biodegradable Collected Waste</td>
</tr>
<tr>
<td>BMW</td>
<td>Biodegradable Municipal Waste</td>
</tr>
<tr>
<td>C&amp;I</td>
<td>Commercial and Industrial</td>
</tr>
<tr>
<td>CW</td>
<td>Collected Waste</td>
</tr>
<tr>
<td>EWC</td>
<td>European Waste Catalogue</td>
</tr>
<tr>
<td>LATS</td>
<td>Landfill Allowance Trading Scheme</td>
</tr>
<tr>
<td>PFI</td>
<td>Private Finance Initiative</td>
</tr>
<tr>
<td>WCAs</td>
<td>Waste Collection Authorities</td>
</tr>
<tr>
<td>WDAs</td>
<td>Waste Disposal Authorities</td>
</tr>
<tr>
<td>WDF</td>
<td>WasteDataFlow</td>
</tr>
</tbody>
</table>