

# Duty to Cooperate on Waste – Practice Guide for Waste Planning Authorities in England

## Living Draft Version 5.1

- *This draft constitutes a living draft version that takes account of feedback received from WPAs and agreed by the chairs of regional waste technical advisory groupings of WPAs*
- *This guide will be periodically reviewed and updated taking account of lessons learned during its implementation*
- *Version 5.1 adds new paragraph 14 and subsequent paragraphs are renumbered.*

**8 July 2021**

# Duty to Cooperate on Waste – Practice Guide for Waste Planning Authorities in England

Living Draft Version 5.1 – 8 July 2021

## Introduction

1. The management of waste has no regard to administrative boundaries, with waste arising in one waste planning authority's area frequently being managed in another. Furthermore, in order to secure economies of scale, waste management facilities will often have a catchment which extends beyond the boundary of the planning area within which it is situated. This is recognised in the current<sup>1</sup> National Planning Policy for Waste that expects waste planning authorities to: "*plan for the disposal of waste and the recovery of mixed municipal waste in line with the proximity principle, recognising that new facilities will need to serve catchment areas large enough to secure the economic viability of the plant;*". For these reasons the management of waste is a cross boundary strategic matter, the planning for which requires co-operation between waste planning authorities.
2. Local Planning Authorities have a duty to cooperate on "strategic matters" relating to sustainable development or use of land that has or would have a **significant** impact on at least two planning areas.
3. Since the introduction of the Duty to Cooperate there has been a tendency for WPAs to consult other WPAs where cross-boundary movements of waste are recorded with little consideration of the significance prior to consultation taking place.
4. **This note is a guide to waste planning authorities (WPAs) in England on the basic process associated with engaging other WPAs with a view to ensuring compliance with the Duty to Cooperate (DtC).** It is intended that this note will help ensure a consistent approach to this matter across England whilst reducing the burden of consultation in relation to issues which are unlikely to be significant across multiple planning areas. Furthermore, the adoption of consistent 'accepted' practices may help with evidencing compliance of the process of preparing waste planning policy with DtC legislation during its independent examination.
5. This note covers DtC engagement between WPAs (including National Park Authorities) only.
6. The note does not constitute legal advice.

## General

7. Engagement between WPAs will take place where it is considered that a strategic level of movements is taking place on an ongoing basis. Engagement will be initiated as part of a WPA's plan making but may also occur when strategic capacity begins operation or is lost.
8. The purpose of engagement is for WPAs to satisfy themselves that it is appropriate to plan on the basis that a certain quantity of a certain type of waste arising in their area, which is

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<sup>1</sup> The version of National Planning Policy for Waste referred to in this document was published on 16 October 2014: <https://www.gov.uk/government/publications/national-planning-policy-for-waste>

deemed to be strategic, may continue to be managed in another WPA area over the plan period.

9. Engagement should ideally result in agreement on ongoing waste movements between WPAs and **this may be achieved by an exchange of letters rather than via a separate Statement of Common Ground** (SCG). The need for a SCG will be agreed between the parties involved but should take into account the National Planning Policy Framework<sup>2</sup> and Planning Practice Guidance.
10. It should be noted that where agreement cannot be achieved this does not necessarily mean that there will be a failure to comply with the Duty to Cooperate.

### **Guidelines for strategic waste movements**

11. What constitutes a 'Strategic' level of waste movement will vary between WPAs.
12. The levels set out below have been agreed in London, the south east and east of England as **a starting point** for considering whether dialogue is required. **The levels are a guide and not a rule i.e. they are not thresholds**. A WPA may still choose to engage another WPA where waste movements are below these levels although it is less likely that a formal Statement of Common Ground would be appropriate.
  - Non-hazardous waste<sup>3</sup> – 5,000 tonnes per annum
  - Inert waste<sup>4</sup> - 10,000t inert per annum
  - *It should be noted that these guideline levels relate to total quantum of movement to an area rather than to a single site. For example, if a WPA exports 6000 tonnes of inert waste to Site X and 6000 tonnes of inert waste to Site Y located in the same area then specific engagement should take place. However, for hazardous waste especially, smaller movements to single sites may occur and so movements may not be strategic.*
  - *The guideline levels relate to waste being exported from one WPA, or one joint waste planning area, to another.*
13. What constitutes a strategic level of **hazardous waste**<sup>5</sup> movement will vary greatly depending on:
  - How much hazardous waste is produced in a WPA area;
  - What type of hazardous waste is produced e.g. the tonnage relating to strategic movements of cement bonded asbestos will be much higher than that relating to waste chemicals; and,
  - The number of facilities capable of managing a certain type of hazardous waste

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<sup>2</sup> NPPF Paragraph 27 states: "In order to demonstrate effective and on-going joint working, strategic policy-making authorities should prepare and maintain one or more statements of common ground, documenting the cross-boundary matters being addressed and progress in cooperating to address these."

<sup>3</sup> Non-hazardous waste is waste without hazardous properties but may decompose to release pollutants.

<sup>4</sup> Inert waste is waste that does not undergo any significant physical, chemical or biological change.

<sup>5</sup> Hazardous waste is waste that is dangerous or difficult to treat, keep, store or dispose of and if improperly handled carries a risk of adverse impact to humans, animals and the environment.

A guideline value of 100 tonnes for hazardous waste has been agreed in London, the south east and east of England but for some WPAs and for some types of hazardous waste a quantity much greater than 100 tonnes will be considered strategic (see paragraph 15 below for further considerations). In the North West a value of 500tpa has been used.

14. The guideline levels relate to waste being exported from one WPA, or one joint waste planning area, to another.
15. The West Midlands Resource Technical Advisory Board has proposed a protocol for identifying movements of waste which may be considered strategic. This is included on the WMRTAB knowledgehub website<sup>6</sup> and may be utilised by any WPA.

### **Data Sources**

16. The main sources of waste data are the Waste Data Interrogator (WDI), Hazardous Waste Data Interrogator (HWDI) and Incinerator Returns. These are publicly available on data.gov.uk. It should be noted that from 2019 the Incinerator Returns are included in the WDI but prior to this year the data is separate.
17. The Environment Agency advise that the HWDI represents reasonably accurate data for the hazardous waste stream. However, the HWDI does not include information on which sites receive the waste so, while the two datasets rarely show the same figures, it helpful to include hazardous waste data from the WDI where it is available to try and identify recipient sites.

### **Notification**

18. Initial engagement is usually to agree the data on movements of waste and identify any reasons why similar movements of waste cannot continue in future e.g. due to the closure of a site. It is the responsibility of the recipient authority to raise any such issues with the exporting authority and to request a statement of common ground if required. Ultimately if no response to such notification is received this may be assumed to mean agreement. An example letter is included at Appendix 1.
19. Following initial engagement, further discussion will be necessary between WPAs to identify whether there is an issue that requires strategic cooperation. There may also be other locally specific circumstances that are appropriate to trigger discussions under the DtC. Matters to consider are as follows:
  - *Is the ongoing waste movement wholly reliant on a single site for management?*
  - *If the quantum of movement is below the guideline levels is it likely to increase in future? E.g. due to other sites closing.*
  - *Are other WPAs (including the host WPA) relying on a particular site for the future management of waste arising in their areas and if so is there a risk that the capacity becomes over committed?*

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<sup>6</sup> <https://khub.net/group/west-midlands-resource-technical-advisory-body>

- *Is the distance of the ongoing movement (i.e. from point of arisings to point of management) consistent with the proximity principle? If it isn't then it is likely that alternative management options need to be considered.*
20. When contacting the receiving WPA it would be useful to include trend data of the scale of imports for at least the last 3 years but ideally 5 years as this helps identify any anomalous years. *It is recognised that inclusion of trend data may be onerous and discussion with the Environment Agency on how such trend data can more easily be obtained from its databases will be sought.*
  21. Where a WPA manages waste from another area and is updating its waste planning policy, it will notify the WPA of the exporting area. This will likely be notification at the initial stages under Regulation 18.
  22. Regardless of whether movements exceed the guidelines, all WPAs should notify every other WPA when commencing work on waste planning – this will act as a ‘safety net’ and allows for changes in the guidelines for ‘strategic’ movements. This will likely be notification at the initial stages under Regulation 18. N.B. A database of generic Waste Planning Authority contacts is available via the regional waste technical groups and will be published on the National Waste TAB Chairs Knowledgehub website<sup>7</sup>.
  23. While SCGs recognise the availability of capacity they cannot allocate specific capacity to meet specific WPA demands. In this sense the principle of ‘first come first served’ does not apply. It is incumbent on all WPAs to monitor, via authority monitoring reports, the availability of capacity to meet ongoing requirements. If it appears that a deficit in capacity is emerging due to over reliance on specific sites then it is incumbent on all affected WPAs to consider alternative arrangements and, ultimately, make updates to policy if required. All SCGs should include an agreement to monitor the provision of capacity and to be updated accordingly.

## Appendix 1: Example DtC Letter

Dear

### Duty to Co-operate: cross-boundary movements of waste

[The exporting WPA] is currently preparing its [name] Waste Local Plan. Further information can be found here.

The Duty to Cooperate requires planning authorities to seek agreement with other planning authorities where their plans may have an impact on their area. I am writing to you as part of the duty to co-operate, about strategic waste exports from [the exporting WPA] to your area.

What constitutes a 'strategic' level of waste movement will vary between waste planning authorities, however the guideline levels set out below have been agreed in London, south east and east of England as a starting point for considering whether dialogue is required. These levels are for the total quantum of movement to an area rather than to a single site.

- Non-hazardous waste – more than **5,000 tonnes** per annum
- Inert waste - more than **10,000t** inert per annum

What constitutes a strategic level of **hazardous waste** movement varies depending on:

- How much hazardous waste is produced in a WPA area;
- What type of hazardous waste is produced; and,
- The number of facilities capable of managing a certain type of hazardous waste

A guideline value of 100 tonnes for hazardous waste has been agreed in London, the south east and east of England.

I have asked five questions below to initiate duty to co-operate engagement on waste.

Q1: Do you agree with the following waste exports figures?

Exports of HIC and CDE waste

Site Name	Site Type	Type of Waste	2015	2016	2017	2018	2019

Source: Waste Data Interrogator and Incinerator Returns

Exports of hazardous waste

Type of waste	Management route	2015	2016	2017	2018	2019

Source: Hazardous Waste Data Interrogator and Waste Data Interrogator

Q2: Do you consider recent movements of waste from [the exporting WPA] to your area to be of 'strategic' importance?

Q3: Are you aware of any planning reasons why similar movements of waste cannot continue in the future (for example any planned closure of facilities)?

Q4: The NPPF requires planning authorities to prepare statements of common ground to document and address strategic cross-boundary matters. Do you consider a statement of common ground is necessary with [the exporting WPA] on cross-boundary movements of waste?

Q5: Are there any other matters you wish to raise at this stage?

I would be grateful for a response to the above questions by [date]. If you have any problems responding, please let me know.

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