EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PROTECTION (WASTE RECYCLING PAYMENTS) (ENGLAND) REGULATIONS 2006

2006 No. 743

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

2. Description

2.1 This statutory instrument specifies the calculation of the value of recycling credit payments from Waste Disposal Authorities (WDAs) to Waste Collection Authorities (WCAs) and to other third parties.

3. Legislative Background

3.1 Section 52 of the Environmental Protection Act 1990 (the 1990 Act) imposes a duty on WDAs to make payment to WCAs for the household waste they retain and recycle. Section 52 also gives a power to both WDAs and WCAs to make payment to third parties for the household waste they retain and recycle.

3.2 The Environmental Protection (Waste Recycling Payments) (England) Regulations 2004 specified the calculation of recycling credits payable by WDAs to WCAs and other third parties. Those Regulations replaced the Environmental Protection (Waste Recycling Payments) Regulations 1992.

3.3 Section 49 of the Clean Neighbourhoods and Environment Act 2005 (the CNEA 2005) amends section 52 of the 1990 Act to give the Secretary of State the power to make regulations in England to set the method of calculation of the payments for both WDAs and WCAs.

3.4 This statutory instrument is made under the new powers under section 52(1)(a), (3)(a) (dealing with WDAs payments) of the 1990 Act following the coming into force (7th March 2006) of the amendment to these provisions by section 49 of the CNEA 2005. The new provisions in section 49 of the CNEA 2005 in respect of WCAs have not yet been commenced.

3.5 These Regulations replace the Environmental Protection (Waste Recycling Payments) (England) Regulations 2004 (S.I. 2004/639 amended by S.I. 2005/415).

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

4.1 None

5. Extent

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Recycling Credits were introduced in Section 52 of the Environmental Protection Act 1990 as a means to pass on to a recycler the savings in the disposal and collection cost, which result from recycling household waste. The scheme was introduced before many other policy levers designed to encourage recycling were put into place and needed reform to bring it into line.

7.2 A review and consultation were carried out in 2004 and subsequent changes were introduced in the CNEA 2005. These changes, which will take effect from 6th April 2006, will, increase flexibility of payment from WDAs to WCAs by giving authorities the option to agree alternative arrangements, clarify that credits can be paid for re-use and give the Secretary of State powers to set the calculation of recycling credits through secondary legislation.

7.3 Government consulted in 2005 on the method by which the value of recycling credit should be calculated. Prior to the introduction of these Regulations, the value of a recycling credit must be equal to the net saving made through not having to dispose of the recycled material. In the case of credits for disposal this was equal to the most expensive form of disposal used.

7.4 The costs to WDAs for recycling credits are steadily rising as a result of increases in the value of credits in line with Landfill tax rises and sharp increases in recycling rates. This means that WDAs are committing an increasing proportion of their budgets to programmes operated by WCAs, which may not be the most cost-effective or sustainable route to achieving a two-tier area's targets, and without regard for the relative cost of collecting and reprocessing recyclables.

7.5 Government proposed in its consultation to cap recycling credits for disposal at its 2005/6 levels with future increases of 3% to cover inflation only. This would provide a similar level of incentives for recycling as in the past but reduce the pressure on WDAs budgets. The increased flexibility in the recycling credits scheme will allow WDAs to work with their WCAs to consider alternative arrangements, which can aid in the achievement of targets and local plans for recycling and composting. The earlier 2004 consultation stressed the importance of having a transparent and simple mechanism for calculating recycling credits. Government therefore proposed in the 2005 consultation to base the calculation on the average cost of recycling credits across whole WDAs, creating a single disposal credit.

7.6 The 2005 consultation broadly supported the Government's proposal. 74% of responses agreed that a change was needed to decouple the value of recycling credits from rising disposal costs. However, a significant number of respondents had concerns about recycling credit being capped at 2005/6 levels as they had calculated their recycling credit income for 2006/7 including this years Landfill tax element. 70% of respondents supported the proposal to average out the credit across a WDA area and agreed that it would provide transparency and make the system more equitable. However, the

proposal to average the recycling credits out across a WDA area could also mean that some WCAs may receive less credits than they did last year.

7.7 To address this issue and allow for smother implementation the Department has specified in the Regulations that the changes will be implemented over two years. Recycling Credits for disposal will be capped at 2005/6 levels but averaging out the credit across a WDA area will be postponed until April 2007.

7.8 In addition, the 2005 consultation proposed that payment of recycling credits to third parties should be calculated in the same way as for local authorities. Recycling credit payments to third parties are at the discretion of local authorities although Government encourages authorities to pay credits where the community activity is compatible with delivery of the area's long-term strategy for waste management. Government believes that where local authorities and third parties are working together there is no rationale for the recycling credit value to be different from those for WCAs. 90% of respondents supported this proposal.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it has no impact on business, charities or voluntary bodies

8.2 There is no impact on the public sector since there will be no net cost associated with the changes proposed. Local authorities will continue to receive increased levels of recycling credits but they will not increase at the rate they have done previously. The increased flexibility in the recycling credits scheme from April 2006 will allow WDAs to work with their WCAs to consider alternative arrangements, which can aid in the achievement of targets and local plans for recycling and composting

8.3 The redistributional effects of averaging out the recycling credit across a WDA area will mean that some authorities will receive less in recycling credits than they have done previously but equally some authorities will receive more that they have done previously. We propose to mitigate these effects through introducing this provision in April 2007 to allow a sufficient lead in period to the change and encouraging WDAs and WCAs to work together to ensure there is no disruption in recycling services.

9. Contact

Fiona Tranter at the Local Authority Funding and Governance Team of Waste Strategy Division at the Department for Environment, Food and Rural Affairs Tel: 020 7082 8431 or e-mail: fiona.tranter@defra.gsi.gov.uk can answer any queries regarding the instrument.