

**EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (PROHIBITION OF CHARGING RESIDENTS TO
DEPOSIT HOUSEHOLD WASTE) ORDER 2015**

2015 No. [XXXX]

- 1.** This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
- 2. Purpose of the instrument**
 - 2.1 This Order prohibits certain local authorities in England from charging their residents to: enter into or exit from household waste recycling centres; or deposit household waste or recycling at such centres¹.
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
- 4. Legislative Context**
 - 4.1 This Order prohibits local authorities in England from using their powers under the Localism Act 2011 (“the 2011 Act”) for the purpose of charging residents to deposit their household waste at a place that has been provided for such residents to deposit household waste (a household waste recycling centre).
 - 4.2 Section 1 of the 2011 Act provides a general power for certain local authorities in England, giving them the same power to act that an individual generally has. Section 5(3) of the 2011 Act gives the Secretary of State the power to make an order restricting what a local authority may do under the general power. The Local Authorities (Prohibition of Charging Residents to Deposit Household Waste) Order 2015 prohibits such authorities from using the general power to charge persons to enter into or exit from a household waste recycling centre or deposit household waste or recycling at such centres.
- 5. Territorial Extent and Application**
 - 5.1 This instrument applies to England.
- 6. European Convention on Human Rights**

¹ Also more commonly known as a civic amenity site, tip or dump.

Kris Hopkins MP, Parliamentary Under Secretary of State at the Department for Communities and Local Government, has made the following statement regarding Human Rights:

“In my view the provisions of the Local Authorities (Prohibition of Charging Residents to Deposit Household Waste) Order 2015 are compatible with the Convention rights.”

7. Policy background

- What is being done and why

- 7.1 Section 51 of the Environmental Protection Act 1990 (“the 1990 Act”) requires waste disposal authorities to provide places at which persons resident in its area may deposit their household waste without charge.² This principle was upheld by the Government’s 2011 Waste Review with a formal commitment: “The Government believes bin charging is counter-productive and would harm the local environment by fuelling flytipping. This includes ensuring that households have access to civic amenity sites where they can deposit their waste and recycling free at the point of use.”³
- 7.2 The purpose of this legislation is therefore to reinforce the principle that household waste recycling centres should be free to use, as the Government is aware that some local authorities have introduced, or plan to introduce, a charge to anybody accessing certain household waste recycling centres to deposit household waste and/or recycling.
- 7.3 The Secretary of State understands that those local authorities argue that these household waste recycling centres to be ‘additional’ to the centres they are required to provide under section 51 of the 1990 Act, and that they are provided as a discretionary service using powers outside of the 1990 Act. The Secretary of State understands that by classifying these household waste recycling centres as discretionary, those local authorities are charging, or proposing to introduce charges, through powers in the 2011 Act. The Government has termed these ‘backdoor’ charges.

² For any non-metropolitan county in England, the county council is the waste disposal authority. For the metropolitan county of Greater Manchester, the role is fulfilled by the Greater Manchester Waste Disposal Authority (though the Metropolitan Borough of Wigan is a statutory waste disposal authority in its own right and is represented on the Authority for administrative purposes). Similarly, for the metropolitan county of Merseyside the Merseyside Waste Disposal Authority fulfils the function. In London, most of the capital’s boroughs are covered by the: Western Riverside Waste Authority; East London Waste Authority; North London Waste Authority; West London Waste Authority; and South London Waste Partnership, but there are a number of London Borough Councils such as the London Borough of Bromley that do themselves fulfil the role of waste disposal authority. A non-exhaustive list of what constitutes household waste and household recycling can be found in WRAP’s *Household Waste Recycling Centre Guide*: <http://tinyurl.com/od9pgg3>.

³ Government Review of Waste Policy in England 2011, paragraph 124
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69401/pb13540-waste-policy-review110614.pdf

- 7.4 Section 1 of the 2011 Act gives local authorities in England⁴ the general power of competence. Prior to the 2011 Act, local authorities could only do things that the law specifically empowered them to do, or which were incidental to those things. However, the general power of competence enables local authorities in England to do anything that an individual with full capacity might do, other than that which is specifically prohibited by law. As such, in the absence of specific limitations, local authorities can set up discretionary services as they see fit. The 2011 Act also allows local authorities to charge for discretionary services.
- 7.5 Following consultation with such local authorities, such representatives of local government and such other persons as he considered appropriate, as required by section 5(7) of the 2011 Act, before making an order under that section⁵, the Secretary of State has considered the representations received and has decided that it is appropriate to exercise those powers and make the Orders because he is seriously concerned that charges at household waste recycling centres of the type that have been introduced or are planned, by a limited number of authorities, will: inconvenience residents; increase flytipping and backyard burning; and make recycling harder for people rather than its stated objective of making it easier.
- 7.6 The provisions in the 2011 Act operate side-by-side with those in section 93(1) of the Local Government Act 2003, which enables best value authorities to charge for discretionary services. Discretionary services are those services that an authority has the power but not a duty to provide. Section 94 of the 2003 Act empowers the Secretary of State to disapply section 93(1) in relation to the provision of a particular kind of service by particular descriptions of relevant authority. The Local Government (Prohibition of Charges at Household Waste Recycling Centres) (England) Order 2015, which will be laid shortly after this Order will disapply section 93(1) of the 2003 Act in connection with the provision of household waste recycling centres by relevant authorities for their residents to deposit household waste or recycling. . Both Orders will seek to prevent local authorities from using the powers in those Acts in order to charge any entry or exit fee to their residents for using a household waste recycling centre for depositing household waste and/or recycling, and charge any fee to such persons in relation to the deposit of household waste at a household waste recycling centre.
- 7.7 The Government generally encourages local authorities to innovate and confidently use the general power of competence to act for their communities and in their own financial interest to generate efficiencies and savings. However,

⁴ Section 8(1) of the Localism Act 2011 defines “local authority”. This includes a county council in England, a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, the Council of the Isles of Scilly and eligible parish councils.

⁵ The Secretary of State does not have a statutory duty to consult those persons before making an order under section 1 of the 2011 Act.

having regard to: the Government's clearly expressed policy of free to use centres for residents; believing that residents deserve a comprehensive waste and recycling service in return for the council tax each household pays; and concerns that these charges will not be beneficial to both residents and the community, the Secretary of State considers that it is, in this instance, appropriate to limit local authorities power to charge and the general power of competence.

- 7.8 The Secretary of State does not wish for existing household waste recycling centres to close as a result of this Order, so those local authorities currently charging their residents to use household waste recycling centres will have until 1 April 2020 to make alternative arrangements for such sites. The Secretary of State has also, through the consultation, invited views on how household waste recycling centres at risk of closure can stay open without local authorities resorting to charging their residents to dispose of household waste and recycling. The Government welcomes the responses received.
- 7.9 Charges for the deposit of other types of waste are permitted and the Secretary of State is not using these Orders to prevent local authorities from charging for: household waste and/or household recycling from non-residents; waste and/or recycling from commercial operators; or 'non-household' waste and or recycling from residents or non-residents.

8. Consultation outcome

- 8.1 The Secretary of State consulted over a four week period (22 January to 18 February 2015) on 'Preventing 'backdoor' charging at household waste recycling centres' and invited views from all English local authorities and English waste disposal authorities; the Local Government Association; and the waste industry. Comments from members of the public, businesses and the voluntary and community sector likely to be affected by the proposal were also welcomed and considered. The discussion paper and summary of responses with the Government response is being published on gov.uk.
- 8.2 Whilst acknowledging that a four week consultation could mean that the Government received a limited response given the time available, the Government does not consider this occurred on this occasion. The Government made significant attempts to ensure that those who could be affected by the proposals had sight of the discussion paper, including through national media channels, with an exclusive feature in The Sun newspaper on 22 January. Its Press Notice generated coverage in waste management journals and websites, including the Chartered Institute of Waste Management on line journal, Letsrecycle.com, and Materials Recycling World, and the Department for Communities and Local Government wrote to Local Authority Chief Executives, the Environmental Standards Agency and to the Local Government Association. The Government is

of the view the consultation was run properly⁶. It believes all those bodies that needed to see it, saw it, and had a reasonable length of time in which to respond.

8.3 The Secretary of State received 61 representations, which suggest that the consultation reached a wide audience, particularly given a number were submitted by partnerships or umbrella groups on behalf of many more individual members. Of the 61 representations two did not address the issues of the discussion paper. The 59 representations were from local authorities and local authority partnerships (county and district councils, London borough councils, waste disposal authorities, local authority waste partnerships, parish and town councils), individuals, businesses, representative bodies (including the Local Government Association) and a voluntary and community organisation.

8.4 Specifically, the discussion paper asked for views on:

- **Issue 1: The Secretary of State's proposed approach to upholding the principle that residents should continue to have free access to household waste recycling centres in their local authority area where they can deposit their household rubbish and recycling for free; and**
- **Issue 2: How household waste recycling centres at risk of closure can stay open without local authorities resorting to charging their residents to dispose of household waste and recycling.**

It also asked for views on whether there are any likely impacts on those who may have protected characteristics under the Public Sector Equality Duty. The responses have been read and categorised in relation to the issues and have been given full consideration as part of the decision to introduce the Order.

8.5 On the first issue the responses were divided almost perfectly half and half with 29 respondents supporting the proposed approach, 30 opposed to the proposed approach and two not offering a view. Those respondents with statutory waste disposal responsibilities⁷, such as county councils, were nearly all opposed to the proposed approach whereas individuals and local authorities with waste collection responsibilities, such as district councils, tended to support the proposed approach.

8.6 30 respondents opposed the proposals for a variety of reasons. These included: it is 'anti-localist'; local authorities are under increasing budget pressures; without charges, centres risk being closed; existing legislation is adequate; and a rejection of the Government's claim that charging will increase levels of fly-tipping. The 29 respondents in support of the Secretary of State's approach agreed that charging residents to deposit household waste at household waste recycling

⁶ Section 5(7) of the Localism Act 2011 requires that the Secretary of State consults such local authorities, such representatives of local government and such other persons as he considers appropriate. We can confirm that he did this.

⁷ Local authority responsibility for the collection and disposal of waste varies between areas. In county areas, district councils are responsible for waste collection, with county councils responsible for waste disposal. All unitary authorities, some metropolitan district councils and some London boroughs are combined waste and disposal authorities. The remaining metropolitan and London councils only have responsibility for collection with disposal being undertaken by statutory waste authorities.

centres would: lead to an increase in fly-tipping and substantial public costs in investigating and clearing fly-tipped waste, and harm recycling levels as residents choose to put recyclable items in their residual waste. Respondents also viewed it as an unnecessary charge as there are many alternatives for making a household waste recycling centre more cost effective. The Secretary of State is not persuaded by the arguments of those respondents opposing the Secretary of State's proposed approach. He remains of the view that such charges will not only inconvenience local residents and make recycling harder for them, but will actively harm the environment, by encouraging fly-tipping and backyard burning.

- 8.7 On the second issue, a number of respondents offered suggestions for how household waste recycling centres at risk of closure can stay open without local authorities resorting to charging such as:
- The example of a successful pilot scheme with a third sector organisation operating a household waste recycling centre;
 - Costs could be kept down through changes to site opening times and associated reduced staff and operational costs;
 - Centres could develop reuse facilities on site, with the possibility of i) on-site training/apprenticeships in furniture restoration; ii) sales of restored/refurbished items; and iii) opportunities for residents to take away items they desired that would otherwise be expensive for the household waste recycling centre to dispose;
 - Developing more attractive cost tariffs for local businesses using centres;
 - More transparency in the Packaging Recovery Notes system and ensuring that a greater proportion of this revenue is routed directly to local authorities
 - Improvements in management and monitoring (eg to prevent fraudulent trade waste disposal) would bring savings to reduce the risk of closure;
 - 'Producer responsibility' should offer more on-going support for household waste recycling centres (both in terms of Waste Electrical and Electronic Equipment collection and packaging waste); and
 - Central Government intervention in the form of business rates reduction or lower Environment Agency permit charges.
- 8.8 The Secretary of State is in general encouraged by the responses with half welcoming the proposals and of the half that did not, many presented helpful ideas around how household waste recycling centres at risk of closure can stay open without local authorities charging residents to dispose of their household waste and recycling at the centres.
- 8.9 The Secretary of State for Communities and Local Government, having given due consideration to the responses received to the consultation and for the reasons outlined above is therefore introducing this secondary legislation.

9. Guidance

- 9.1 No guidance is considered necessary.

10. Impact

10.1 An impact assessment has not been produced for any of these instruments as no impact on the private or voluntary sector is anticipated.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Given the limited impact of this Order, the Government does not currently plan to undertake any monitoring, but will, of course, keep this under review in the normal course of business. The Government will conduct a post implementation review of the 2011 Act as per the existing commitments.

13. Contact

Padma Juggapah at the Department for Communities and Local Government Tel: 030 3444 3512 or email: Padma.Juggapah@communities.gsi.gov.uk can answer any queries regarding the instrument.