

EXPLANATORY MEMORANDUM TO
THE CONTROLLED WASTE (ENGLAND AND WALES) REGULATIONS 2012

2012 No. 811

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. Purpose of the instrument

2.1 This instrument revokes and replaces the Controlled Waste Regulations 1992 (SI 1992/588, “the 1992 Regulations”), and is made on a composite basis with the Welsh Ministers. It classifies waste as household, industrial or commercial waste, and also lists the types of waste for which local authorities may make a charge for collection and disposal. The instrument enables local authorities (as waste collection authorities under the Environmental Protection Act 1990) to charge under section 45 of that Act for the disposal of waste arising from a wider range of non-domestic premises than the 1992 Regulations permitted; it also consolidates previous amendments, and includes some amended and updated definitions and classifications to improve the clarity of the Regulations and bring them into line with other recent legislation. It also provides that certain litter and refuse is to be treated under Part 2 of the Environmental Protection Act 1990 in the same way as waste collected under section 45 of the Act.

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

3.1 None

4. Legislative Context

4.1 Part 2 of the Environmental Protection Act 1990 (“the 1990 Act”) is the principal primary legislation relating to waste.

4.2 Section 75 provides for definitions. Subsection (2) defines waste and subsections (5), (6) and (7) classify certain types of waste as “household waste”, “industrial waste” and “commercial waste”. Subsection (8) gives power to make Regulations providing that waste of a prescribed description is to be treated for the purposes of provisions of Part 2 as being or not being household, industrial or commercial waste.

4.3 Classification affects the duties and powers of local authorities under Part 2 of the 1990 Act in relation to waste. In particular, local authority duties and powers in section 45 in relation to collection of waste and charging for collection and subsequent disposal are defined by the classification.

4.4 The principal EU measure on waste is Directive 2008/98/EC (OJ No L312, 22.11.08, p3) and some provisions of Part 2 of the 1990 Act implement parts of that Directive (for example section 34 – see the transposition table annexed to the explanatory

memorandum for SI 2011/988 for fuller details). These provisions use the term “controlled waste”, which is defined in section 75(4) of the 1990 Act to depend on the terms “household waste”, “industrial waste” and “commercial waste”. The Regulations ensure that the term “controlled waste” has the same effect as the meaning of “waste” in the Directive.

4.5 Section 45(1) and (2) of the 1990 Act set out duties and powers of waste collection authorities in relation to the collection of waste. Subsection (3) provides that no charge can be made for the collection of household waste except in cases prescribed in regulations (in which case a reasonable charge may be made). Subsection (4) empowers a reasonable charge to be made for the collection and disposal of waste other than household waste. Regulation 4 of the 1992 Regulations prescribed certain types of waste in relation to which a collection charge could be made under section 45(3). Regulations 5 to 7A provided that certain descriptions of waste were to be treated as industrial and commercial waste for the purposes of Part 2 of the 1990 Act.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- **What is being done and why**

7.1 Section 75(8) of the Environmental Protection Act 1990 (“the Act”) gives the Secretary of State the power to make Regulations prescribing which wastes are to be treated as being household, commercial or industrial waste.

7.2 The 1992 Regulations predated significant changes in waste legislation and policy; in particular, by insulating certain premises from the cost of disposing of their waste, the 1992 Regulations undermined efforts to reduce waste and increase recycling. The exemption from disposal charging also extended to private institutions and some businesses, and disposal costs were paid by the taxpayer. As the cost of disposing of waste continues to rise, the market for waste services was being increasingly distorted by artificially low local authority charges which excluded disposal costs.

7.3 This instrument describes waste which is to be treated as household waste, industrial waste or commercial waste, and specifies (under section 45(3) of the 1990 Act) the types of household waste for which a collection charge may be made. In addition, it specifies that certain types of household waste are to be treated as commercial waste for the purpose of enabling a charge to be made for the collection of the waste and, in some cases, its disposal under section 45(4) of the 1990 Act.

7.4 This instrument also provides that Part 2 of the Act has effect as if references to controlled waste collected under section 45 include references to litter and refuse collected under sections 89(1)(a) and (c), 92(9) and 92C(3) of the Act. This continues the policy provided for in the 1992 Regulations.

7.5 Paragraph 11 below deals with the steps taken to minimise the impact of this instrument on small businesses. In addition, in order to minimise the impact on publicly-funded schools and further education colleges, and to ensure that no new burdens are placed on them before the next Spending Review period, this instrument preserves the current position in relation to whether charges for disposal of waste may be made for waste collected from certain schools and colleges.

7.6 This means that where schools and further education colleges currently have their waste disposed of without charge by the local authority, after the coming into force of this instrument they will be able to continue to use that service without being charged for disposal; and where those types of educational establishments currently use a commercial provider for their waste disposal (and therefore already pay the full cost of collection and disposal), but, after the coming into force of this instrument, choose to move to a local authority service, then the local authority will be able to charge the full cost of both collection and disposal.

8. Consultation outcome

8.1 Defra has consulted extensively on these proposals. Informal consultation included 4 stakeholder workshops held around the country, involving over 150 representatives from local authorities, industry and affected customer groups. A formal public consultation was held between November 2010 and January 2011. This received responses from 270 organisations and individuals, including local authorities, community groups, small businesses, and institutions. Responses were overwhelmingly supportive with over 90% of respondents agreeing with the majority of proposals. An analysis of responses is available on the Defra website. <http://www.defra.gov.uk/environment/waste/local-authorities/controlled-waste-regs/>

9. Guidance

9.1 The government response to the consultation addresses the specific questions raised in the consultation, and is available on the Defra website <http://www.defra.gov.uk/environment/waste/local-authorities/controlled-waste-regs/> Defra does not intend to issue further guidance in respect of these Regulations, but will keep this issue under review.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that local authorities can now charge them, with some exemptions, for the disposal of waste from their premises. The majority of businesses already pay for the disposal of their waste, and the impact on small businesses is discussed in section 11. Charity shops are defined in the Regulations

as separate premises from those used for charitable purposes, and are exempt from disposal charges. The status quo will be maintained for publicly-funded schools and further education colleges, and is discussed in section 12. Premises used wholly or mainly for public meetings will also be exempt.

10.2 The impact on the public sector is slightly positive, as the taxpayer will no longer be required to pay for the disposal of waste arising from private institutions and businesses.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside it on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation affects small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that local authorities shall have the freedom to decide on whether to charge for collection and disposal of waste on a case-by-case basis, allowing them to make decisions which best support local needs and aspirations.

11.3 A formal public consultation was carried out, which included seeking views of small businesses. The majority of small businesses already pay for the disposal of their waste. Those likely to be affected by these Regulations are in the self-catering holiday accommodation and childcare (pre-school) categories.

11.4 To minimise the impact of the requirements on small and micro businesses, this instrument provides for an exemption from waste disposal charges for businesses which are currently (a) eligible for free waste disposal and (b) entitled to Small Business Rate Relief.

12. Monitoring & review

12.1 A Post-Implementation Review Plan is included on page 23 of the Impact Assessment. We are committed to review these Regulations in 2015, three years after the new provisions come into force.

12.2 We will consider the regulations to be successful if they have created a level-playing field for local authorities and commercial waste contractors to compete for business. We will revisit the rationale for exempting charity shops, reuse organisations, firms eligible for free waste disposal and entitled to Small Business Rate Relief, and premises used for public meetings, from waste disposal costs, to ensure that they are still producing negligible amounts of waste and that there is no widespread abuse of the exemption. We will also reconsider the maintenance of the status quo for publicly-funded schools and FE colleges who already use local authority services.

12.3 This review will be carried out by Defra officials in consultation with stakeholders and other government departments; it will be a proportionate check that the Regulations are functioning as intended.

13. Contact

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