

EXPLANATORY MEMORANDUM TO
THE CONTROLLED WASTE (ENGLAND AND WALES) (AMENDMENT)
(ENGLAND) REGULATIONS 2023

2023 No. 1243

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Controlled Waste (England and Wales) Regulations 2012 (“the 2012 Regulations”) to add an additional purpose for when waste produced from construction works (“construction waste”) should be treated as household waste, which is for the purpose of section 51 of the Environmental Protection Act 1990 (“the 1990 Act”), but only where the construction waste meets a certain description.
- 2.2 Where the construction waste meets the description, this will mean that householders are able to dispose of this waste for free at Household Waste Recycling Centres (“HWRCs”) as it will be household waste and not industrial waste.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Part 2 of the 1990 Act is the principal primary legislation relating to waste.
- 6.2 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” respectively. 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. Classification affects the duties and powers of local authorities under Part 2 in relation to waste.
- 6.3 The 2012 Regulations were partly made under section 75(8) of the 1990 Act. Paragraph 3 of Schedule 1 to the 2012 Regulations describes waste which is to be

treated as household waste, commercial waste or industrial waste because of its nature or the activity which produces it notwithstanding the place where it is produced. The waste must be treated for the purposes of Part 2 of the Act as the type of waste mentioned in the third column, subject to any exception in the fourth column.

- 6.4 Entry 9 of the table entitled “Classification by nature of waste or activity producing waste” currently classifies waste from construction or demolition works, including preparatory works as industrial waste. There is currently only one exception where construction waste should be treated as household waste, which relates to section 34(2) and (2A) of the 1990 Act. The amendment to the 2012 Regulations will add an additional exception relating to section 51 of the 1990 Act but only if the construction waste meets a certain description. Section 51 imposes a duty on Waste Disposal Authorities (“WDAs”) to provide a place for household waste to be deposited for the people of its area and makes provision for such service to be provided free of charge at the discretion of the WDA.
- 6.5 The Local Government (Prohibition of Charges at Household Waste Recycling Centres) (England) Order 2015 and The Local Authorities (Prohibition of Charging Residents to Deposit Household Waste) Order 2015 (“the 2015 Orders”), by way of providing an exemption to the power to charge for discretionary services in section 93 of the Local Government Act 2003, prevent councils in England from charging residents to deposit household waste at household waste recycling centres (HWRCs), so householders can dispose of household waste for free in their local area. Both 2015 Orders state that “household waste” has the same meaning as in section 75 of the 1990 Act as read with regulation 3 of, and Schedule 1 to, the 2012 Regulations.

7. Policy background

What is being done and why?

- 7.1 It has long been government policy that small amounts of construction waste generated by householders should be classified as household waste, allowing it to be disposed of free of charge.
- 7.2 In the 2012 regulations, “waste from construction or demolition works, including preparatory works” is classified as industrial waste. There is no express exception set out in the legislation for small amounts of construction waste produced by householders (“DIY waste”).
- 7.3 This means that some local authorities do not charge for the disposal of DIY waste whereas other local authorities do charge for DIY waste on the basis that it is construction waste, which can be charged for under legislation. This means that householders face charges to dispose of DIY waste at HWRCs in some areas, while others do not.
- 7.4 This policy aims to clarify, in legislation, when construction waste should be treated as household waste, and when it should be treated as industrial waste. The amended legislation provides a description for when construction waste should be considered household waste, and therefore be free of charge to dispose of.
- 7.5 The description aims to strike the balance between making it easier for householders to dispose of their waste in a responsible manner while upholding the polluter pays principle by limiting the amount of construction waste that can be disposed of free of charge. It also aims to minimise the risk of abuse of this policy by traders.

- 7.6 Construction waste can be classified as DIY waste and therefore household waste and disposed of for free when it meets the following description:
- 7.6.1 The waste is produced at a domestic property by occupiers of that domestic property carrying out their own construction or demolition works, including preparatory works.
 - 7.6.2 The waste is not from construction or demolition works, including preparatory works, for which payment has been or will be made.
 - 7.6.3 The waste is capable of being fitted into two 50 litre bags or it is a single article of waste no larger than 2000 mm x 750 mm x 700 mm in size.
 - 7.6.4 The waste delivered does not exceed four single visits per household in any four-week period to any HWRC.
- 7.7 HWRCs can charge for the disposal of waste which does not meet this description as it will still be industrial waste. For example, any waste above the quantity set out in the description, or which is brought to a HWRC more frequently than four times in a four week period, would still be industrial waste. Similarly, if the HWRC had reason to believe that none of the construction waste meets the description, for example, if it had been brought by or on behalf of a tradesperson, local authorities can charge for all of the waste as it should still be treated as industrial waste.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 Informal consolidated texts of instruments are available to the public free of charge via the National Archives website.

10. Consultation outcome

- 10.1 The Technical Consultation on Preventing Charges to Householders for Disposal of 'DIY' Waste at Household Waste Recycling Centres and Call for Evidence on Booking Systems at Household Waste Recycling Centres lasted for 12 weeks and ran from 11 April 2022 to 4 July 2022.
- 10.2 The purpose of the consultation was to seek views and feedback on four proposed technical principles or descriptors to clarify, in legislation, when construction waste should be treated as household waste and be free for disposal.
- 10.3 We consulted on the following four criteria:
- 10.3.1 The waste is produced by householders whilst carrying out small-scale construction or demolition works at their home;
 - 10.3.2 The waste does not arise from activities that generate an income for the person who carried them out;
 - 10.3.3 The waste is not produced on a regular basis requiring HWRC visits more frequently than once a week;
 - 10.3.4 The volume of waste is no greater than 300 litres (based on the approximate size of a family car).

- 10.4 Overall, 2,238 responses were received. There were 2,210 responses to a question about the technical principles noted above and most (90%) agreed with those proposed. However, having considered the responses, the criteria were amended slightly. Improved flexibility for householders was incorporated by changing the number of visits that would be needed to dispose of the DIY waste from one visit per week to four visits in any four-week period. We also altered the volume of the construction waste that would count as DIY waste from 300 litres per week to the equivalent of 2 x50 litre rubble bags (totalling less than 100 litres) per visit or a bulky item to minimise the risk of abuse by traders and to make quantifying the waste easier for both householders and HWRC staff.
- 10.5 The government response to the consultation was published on the 18th June 2023, and is available on the Defra website <https://www.gov.uk/government/consultations/household-waste-recycling-centres-diy-waste-disposal-charges-and-booking-systems>

11. Guidance

- 11.1 Defra does not intend to issue guidance in respect of this amendment to the 2012 Regulations. Local authorities will be responsible for implementation, including how best to implement any required checks by HWRC operatives.

12. Impact

- 12.1 There is no impact on business, charities, or voluntary bodies. A full impact assessment has therefore not been completed.
- 12.2 The decision was taken by the Department of Levelling Up, Housing and Communities to waive New Burdens funding in this instance. This is because this policy will ensure householders can dispose of DIY waste free of charge, which will remove any financial disincentive to dispose of waste properly. Any local authorities, which currently charge householders to dispose of DIY waste, will be required to absorb any associated costs.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the instrument can be updated as necessary in future.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Suzanne Stafford at the Department for the Environment, Food and Rural Affairs. Telephone: 020 7714 1332 or email: suzanne.stafford@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Chris Preston, Deputy Director for Resources & Waste, at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rebecca Pow at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.