

Consultation on the Revocation and Replacement of the Controlled Waste Regulations (1992)

Government Response to the Consultation

March 2012

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England

Government response to the consultation on proposals to amend and update the Controlled Waste Regulations (1992)

Introduction

We would like to thank everyone who contributed to our review of the Controlled Waste Regulations (1992) – whether by sending a formal written response, or by being involved in the workshops and meetings which helped to shape the consultation document.

A summary of the outcomes of the informal consultation stage of the review can be found on our website at <http://www.defra.gov.uk/environment/waste/local-authorities/controlled-waste-regs> while the Summary of Responses to the formal written consultation is available at <http://archive.defra.gov.uk/corporate/consult/controlled-waste-regs/index.htm>.

The majority of respondents agreed with most of our proposals, and we intend to legislate accordingly in those areas. This report addresses the issues where there was less consensus among consultees, where consultees have convinced us that our intended approach was wrong, or where there were significant misunderstanding of the purpose and effect of the proposals.

We must begin by re-iterating that our proposals make **no change to the charges that local authorities may make to householders**. All our proposed changes affect only premises occupied by institutions and businesses.

Option 1

Do you agree with our assessment that publishing guidance on the current CWR rather than amending the regulations would not be an effective means of tackling the problems with the legislation? If not, please set out why you would prefer guidance.

Only two respondents felt that guidance would be effective, both citing the fact that the majority of Schedule 2 waste is created by public sector bodies. However, neither response addressed the negative impacts of guidance as set out in the consultation document, or gave reasons why they felt it was reasonable for Schedule 2 organisations to be shielded from the full costs of their waste disposal.

We acknowledge that the majority of the waste affected by this change originates in the public sector, and we believe that it is right that budgets for waste disposal should lie with the body responsible for creating the waste. This will increase the transparency of public budgets, remove the current insulation of public bodies from

incentives to reduce waste and increase recycling, and remove local authorities' open-ended liability to pay for the disposal of waste over which they have no control.

In light of the lack of support for guidance from the majority of respondents, and in the absence of any additional evidence which would suggest that guidance would be effective, the government has rejected option one.

Option 2

Question 1: Do you agree that waste from tents should be classified as commercial waste?

Question 2: Do you agree that waste from caravan sites or parts of caravan sites, not licensed for permanent domestic accommodation, should be classified as commercial waste?

Question 3: Do you agree that waste from properties used for the provision of self-catering accommodation and registered for business rates should be classed as commercial waste?

It was generally agreed, including by representatives of the self-catering holiday business sector, that campsites and caravan sites are leisure businesses and should be treated in the same way as other businesses in respect of waste disposal charging, and so we intend to legislate accordingly.

Some respondents felt that waste from campsites should not be classed as commercial waste, or that only waste from campsites paying business rates should be classed as commercial waste. We appreciate that there may be specific circumstances where local authorities may wish to waive fees on certain sites. However, we consider that the legislation gives local authorities sufficient flexibility to allow them to waive fees for commercial waste if they feel that it is justified.

Several consultees also raised concerns over caravans. We would like to clarify that there is no change to the charges local authorities can make for handling waste from domestic caravans. It is a matter for local authorities to decide how best to apply charges to mixed-use sites and avoid double-charging caravan owners who also pay council tax.

Note: We are not aware of any case where a person is using a tent as their permanent domestic accommodation. However, in such an event, we would expect local authorities to exercise their discretion and consider whether it would be appropriate to treat such a tent as a domestic property in the same way as a caravan, boat or vehicle which is used for living accommodation.

Since embarking on the review of this legislation, the Coalition Government has made clear its commitment to support small business, and to improve the competitiveness of the domestic tourism industry in particular. Therefore, we have

reviewed again the impact of the proposed amendments. In particular we have focused further on the impact on small and micro businesses.

As a result, we are modifying our proposals in this area to support this sector. We intend to legislate to provide an exemption from liability to pay disposal charges for those small businesses which are (i) currently – i.e. immediately before the Regulations come into force - eligible for free waste disposal and (ii) eligible for Small Business Rate Relief .

The intention behind this exemption is not to place additional burdens on those small businesses currently eligible for free waste disposal at the current time. In terms of categories of business this applies to, we expect this primarily to support self-catering accommodation, small campsites and caravan parks, further underlining the Government's intention to support domestic tourism.

Linking the exemption to eligibility for Small Business Rate Relief ties the exemption to the same category of businesses that the Government wants to support through that initiative. In addition, it provides a degree of future proofing of support for such businesses in line with Government policy on Small Business Rate Relief.

The impact of this exemption is targeted in two ways. Firstly, the range of businesses currently exempt from waste disposal charges in the existing Controlled Waste Regulations is relatively small, in comparison to the total number of small businesses. Secondly, by linking the exemption to Small Business Rate Relief, those larger establishments, which produce the most significant amounts of waste, will not be captured by this exemption.

Question 4: Do you agree that local authorities should be entitled to charge charities for disposal of the waste they produce?

We accept that many, but by no means all, in the community and charity sector were opposed to this measure, but we are not persuaded that local taxpayers should be required by law to support all charities operating in their area, nor that providing free waste disposal is necessarily the most appropriate means of supporting charities.

We therefore intend to take forward our plans to allow local authorities to exercise discretion in charging for waste disposal from charities in their area, as they are answerable to local taxpayers for how their money is spent.

Question 5: Do you agree that waste from premises used for public meetings should be classified as commercial waste?

The overwhelming majority of community sector respondents were opposed to this proposal. We have considered their case, and although we believe that the amounts of waste, and hence the possible additional charges, are small, we accept that many such premises exist on very tight budgets and provide an important service to their communities.

Considering the wider government desire to support community groups who facilitate our vision for a Big Society, we have decided to withdraw this proposal. Premises

used wholly or mainly for public meetings will, therefore, continue to be liable to pay for the collection of their waste but not for its disposal.

We would encourage these premises to work closely with their local authority to reduce the waste they produce and to recycle as much as possible, thereby reducing both collection and disposal costs.

Question 6: Do you agree that waste from Royal Palaces should be classified as commercial waste?

Question 7: Do you agree with the reclassification of non-clinical waste from GP surgeries:

Our proposals to categorise as commercial, waste from Royal Palaces and non-clinical waste from GP surgeries, received near unanimous support from respondents. On Royal Palaces, and non-clinical waste from GP surgeries, we intend to legislate accordingly.

Question 8: Do you agree that local authorities should have the power to charge educational institutions for disposal of their waste?

Question 9: Do you agree that litter collected on premises occupied by educational establishments should be charged for in the same way as other non-hazardous waste generated on the site?

Similarly to the responses to Questions 6 and 7, our proposals to allow local authorities the power to charge educational establishments for their waste disposal received near unanimous support from respondents. As a result, we intend to legislate to treat educational establishments as commercial waste. However, subsequent to the consultation, further work has highlighted difficulties in reaching agreement on how to enact this in practice for schools and FE colleges, which has required a change of approach.

The intention of the proposed amendments was to ensure that responsibility for the cost of waste management lay with those producing the waste. Correspondingly, the budget for this waste management should sit with those waste producers.

Deciphering the range of existing waste management practice and funding arrangements for schools and Further Education colleges, to reach agreement on the impact of the amendment to different budgets, has been more challenging than anticipated. As a result ,we intend to include an exemption from the reclassification of educational establishments to commercial waste for these premises.

Our intention is to legislate to support an interim position, reflecting existing practice. Those publicly-funded schools and Further Education colleges which currently benefit from free waste disposal immediately prior to the Regulations coming into force will continue to be exempt from waste disposal charges levied by the local authority.

Those schools and Further Education colleges using commercial providers and therefore currently paying full cost of waste collection and disposal will not benefit

from this exemption. In addition, non-publicly funded schools will not benefit from this exemption. This is set out in paragraph 4(8) of Schedule 1.

This ensures that no additional costs for the disposal of waste will be placed on publicly funded schools and FE colleges. At the same time, it limits the exposure of local authorities to additional costs from schools and FE colleges who have been using commercial providers to manage their waste and who may wish to return to local authority arranged waste management.

It remains our policy position that schools and FE colleges should have responsibility for the cost of their waste management and in the longer term that is the position we want to reach. We will review this aspect of the legislation ahead of the next Spending Review period, which we anticipate will commence in April 2015, with a view to enacting our policy position.

Question 10: Do you agree that local authorities should have the power to charge hospitals and nursing homes for disposal of their waste?

This proposal was supported by the large majority of consultees, however several respondents expressed concern over the status of waste generated by people who are residents on site but who pay council tax.

We acknowledge that many sites are mixed-use, with staff housing located on the same campus as healthcare facilities. In general, we consider that there should be no charge for the collection or disposal of waste from domestic properties which are liable for council tax, where their waste is collected separately from other waste on the site. Waste from multi-occupancy residential buildings should generally be treated as being from a residential hostel for the purposes of charging.

However, given that large sites may have many permutations of domestic and non-domestic occupancy and use, including some uses which are commercial and profit-making, we believe that it is best to give local authorities the power to decide on the most appropriate charging structure for individual premises.

Question 11: Do you agree that the term ‘residential home’ is equivalent to ‘care home’, and that ‘nursing home’ is equivalent to ‘care home with nursing’?

We acknowledge the concerns of respondents who wanted the new Regulations to use the modern terminology, as set out in the Care Standards Act 2000. However, as explained in the consultation document, this would require amending the Environmental Protection Act 1990 (EPA). As amendment of the EPA, which is primary legislation, is not currently on the government’s legislative agenda, it is likely to take a very long time to amend, and this would not meet the desire for an early resolution to the problems with the Controlled Waste Regulations, which was expressed very strongly at the informal consultation stage.

Generally, respondents were content that the terms were equivalent, and we therefore ask users of the regulations to treat them as such.

Question 12 - Do you agree that local authorities should have the power to charge residential homes for disposal of their waste?

In general, this proposal was supported, although a number of consultees suggested that there should be no additional charge for providing waste services to individual units which are liable for council tax, or for disposal from multi-occupancy buildings where residents are paying council tax.

The terms 'residential home' and 'nursing home' in the EPA were drawn from the Registered Homes Act 1984. In this legislation, residential homes are defined as providing residential accommodation with both board and personal care. Although healthcare legislation has moved on, our view is that it was clearly the intention of Parliament at the time of the introduction of the EPA to restrict the definition to premises which provide accommodation, board and care. We do not therefore consider that groups of self-contained domestic accommodation, such as sheltered housing estates, could generally be classed as a 'residential home' for the purposes of the Controlled Waste Regulations.

However, given the variety of possible permutations of occupancy and use, we believe that local authorities should have the discretion to decide on the most appropriate charging structure for individual premises, but should bear in mind any contribution towards waste collection and disposal which is already made by residents or owners when setting fees.

Question 13 - Do you agree that local authorities should have the power to charge penal institutions for disposal of their waste?

The overwhelming majority of respondents supported this proposal. We are aware that penal institutions have made significant investment in recycling facilities, and had concerns over their continued eligibility for recycling credits – which are only payable on household waste. As a result, we have retained the household classification for waste from penal institutions, which will allow local authorities to continue to pay recycling credits if they wish.

One council expressed concern about the impacts on reportable recycling and waste reduction performance should penal institutions choose to request collections from the local authority, and requested that the waste be classed as 'commercial'.

It should be noted that the target for recycling set by the revised Waste Framework Directive does not apply to "household waste", which is a UK concept established by the EPA. The target in the Directive will be applied to waste from households.

Question 14 - Do you agree that decisions of collection and disposal charging are best made by individual local authorities, and therefore the discretion on whether to charge or not should be retained for collection and extended to the proposed new power to charge for disposal?

This proposal received a mixed response, although over 80% of respondents were in favour. Those who were not in favour of allowing local discretion generally considered that the decision should be made centrally in order to ensure consistency across the country.

We acknowledge the benefits to national organisations of a single approach to charging; however, as the disposal of this waste is paid for by local taxpayers, we believe that it would be inappropriate for central government to take such decisions.

One respondent felt that there were human rights issues at stake, with the potential for local authority decisions on charging to be discriminatory. Local authorities have to abide by UK law, and can and should be held to account by their electorate. We can, therefore, see no reason why central government needs to take decisions on their behalf, and believe that the lack of flexibility of national decisions in the face of local needs could increase the possibility of inadvertent discrimination.

Local authorities are best placed to decide whether, and how, to subsidise the operations of organisations which bring benefits to their area. In general, we do not believe that central government should make blanket exemptions in law, or make issue guidance which constrains the decision-making powers of local authorities; they are directly accountable to local people, and should make decisions based on local needs not Whitehall edicts.

We are aware that this will lead to different charging practices in different areas of the country, but we consider that this is a positive outcome. Different places have different needs and priorities, and we should not seek to impose one-size-fits-all solutions.

A number of respondents made the point that the decision to charge for disposal should be made by the Waste Disposal Authority, as they are the authority who foot the bill. Paragraph 4(3)(b) of Schedule 1 makes it clear that certain household waste is to be treated as commercial waste for the purposes of section 52(9) of the EPA, which allows Waste Disposal Authorities to claim reimbursement for disposal. The decision remains with Waste Collection Authorities as to whether they wish to pass the charge for disposal on to their customers.

Question 15 - Is there any reason why the duty to make arrangements, if asked, to collect waste from institutions listed in the table at paragraph 4 of the Schedule should not be retained?

There were no reasons given to withdraw the duty which we considered would override the public health interest in ensuring that these institutions continue to have guaranteed access to waste services.

There were a number of questions raised about how this duty should be met in practice, and how costs should be met.

The continuing duty to arrange for collection of this waste in no way precludes local authorities from making a charge which covers the full cost of providing the service. It should be noted that the duty is ‘to make arrangements’ to collect the waste; they may arrange to do this by using commercial waste operators. However, the *duty* remains with the local authority and so, when premises ask the local authority to collect their waste, it is the local authority who must contract with a commercial waste operator, not the premises.

Where the local authority provides the waste collection service, or contracts with a private operator to provide the service, they may use their powers under sections 46 and 47 of the EPA (for household and commercial waste, respectively) to set the terms of the service, including frequency of collection, type of receptacle and requirements to separate waste for recycling. These requirements must be reasonable in the context of the premises being served, and not merely the same requirements as are placed on domestic householders.

Several consultees also raised the issue of asbestos from domestic properties as part of their response to this question. Asbestos came up in several places throughout consultation responses and is addressed separately at the end of this report.

Question 16 - Do you agree with the principle of postponing the introduction of disposal charging? If so, do you consider twelve months to be an appropriate period of time?

Again, this was largely supported, particularly by customers. We have taken longer than initially expected to consider the consultation and make changes where appropriate. However, we consider that the consultation process has ensured that customers have had due notice of the direction of travel and therefore intend for the changes to the charging powers to take effect from April 2012 as proposed.

Question 17 - Do you think that the current definition of clinical waste in the regulations is useful? If not, what would you consider to be a better definition?

It was generally agreed that the definition of clinical waste was not particularly useful in classifying material. The majority of respondents who suggested improvements wanted the regulations to be compatible with the European Waste Catalogue definitions.

We have therefore refined the definition of 'clinical waste' in agreement with colleagues in the Department of Health and the NHS in Wales, to make it more consistent with the Lists of Wastes Regulations and with current guidance on clinical and offensive wastes. Legislation cannot resolve all the practical issues associated with identifying such waste, and we encourage local authorities and health care providers to work together to ensure that waste created by medical treatment in the home is handled safely and appropriately.

Question 18 - Is the new definition of a 'residential hostel' clearer? Does it exclude any types of hostel which you consider should be included?

Some 94% of respondents agreed that the new definition is clearer. Some local authorities asked for greater clarity on specific types of hostel, in particular Youth Hostels and Ministry of Defence Single Living Accommodation (army barracks).

We consider that the new definition is sufficiently clear that the property must be the main residence of its occupants. A hostel providing short-term holiday accommodation, such as a youth hostel, would therefore not generally be classed as a 'residential hostel'.

In the case of Single Living Accommodation, we believe that the majority of premises will be classed as residential hostels. However the Ministry of Defence provides a variety of types of accommodation for service personnel and it would not be practicable to capture all of these in legislation. Similarly, most shared accommodation provided for hospital staff will meet the definition of a 'residential hostel', but there may be cases where such a definition is not appropriate. Local authorities will, therefore, need to exercise some judgement on individual premises where the classification is not obvious.

Several consultees felt that the regulation should apply only to residential hostels where accommodation is provided rent-free, however we could see no justification for this, as the Regulations in relation to living accommodation are designed to allow local authorities to recoup the additional costs of collecting household waste which cannot be handled as part of the normal household waste collection round – due, in the case of residential hostels, to the large amounts of waste produced by a single premises.

No reasons were provided for the wish to treat the disposal of waste from residents paying rent for hostel accommodation differently from that of residents paying rent for self-contained accommodation. We have therefore disregarded this suggestion.

It was further suggested that the definition be expanded to include premises providing temporary accommodation as part of civil defence, natural disaster or violence. Such instances are already covered by the definition, as the residents are in temporary accommodation because they "are unable to live at their permanent address."

Question 19 - Do the new regulations make it clear that waste arising from domestic caravans and vehicles at a transit site is household waste?

Waste from caravan and mobile home sites for gypsies and travellers are classified as household waste under paragraph 2 of Schedule 1. As with any other collection of household waste, authorities may apply reasonable terms to the collection of waste from caravan sites, by issuing a notice under section 46 of the Environmental Protection Act 1990, which allows local authorities to require occupiers to place waste for collection in receptacles of a kind and number specified.

Local authorities may make whatever arrangements they deem necessary to ensure that the waste being presented for collection by any user of the household waste collection has not arisen from commercial activity.

Question 20 - Do you agree that charity shops and re-use organisations should benefit from free waste disposal?

The majority of local authorities and waste industry representatives disagreed with this proposal, mainly on the grounds of cost to local taxpayers.

We believe these organisations play a crucial role in facilitating re-use and diverting used goods away from the waste stream, as the majority of items donated to charity

shops and re-use organisations would otherwise probably have been discarded and disposed of in domestic waste. Their activities reduce the cost to local authorities, and hence to local taxpayers, of collecting and disposing of used items.

We therefore continue to believe that it is not appropriate for charity shops and re-use organisations to pay for the disposal of waste which originated in domestic properties.

In response to concerns about a possible subsidy to commercial re-use businesses, we have amended the definition to restrict free disposal to charities, community interest companies and not-for-profit organisations.

Question 21 - Do you consider that the restriction of free waste disposal to waste originating from a domestic property is practical?

Question 22 - If you are a waste disposal authority, would you be willing to accept all goods from charity shops for free disposal in order to reduce the administration burden? If so, do you think the legislation should refer to all goods, rather than specifying goods originating from domestic properties?

Question 23 - Are any safeguards necessary to ensure that commercial waste is not channelled through charity shops and reuse organisations in order to avoid disposal charging?

Collection authorities and charity shops generally felt that it would be impractical to restrict free waste disposal for charity shops and re-use organisations to goods originating in domestic properties, but waste disposal authorities were generally not minded to accept all waste. While many respondents felt that safeguards were necessary, it was not clear that those safeguards could or should be included in legislation.

After consideration, we have concluded that the handling of unusable donations from commercial sources is best left to local discretion. Local authorities will therefore have the right to charge for the disposal of such waste, but where they choose to exercise that right, they should give charity shops and re-use organisations clear guidance on the records they need to keep in order to ensure that they are not charged for the disposal of waste originating from households.

Question 24 - Do you agree that the new structure is clearer? Please identify any wastes which are missing from the new Schedule which you believe should be listed in these Regulations.

We received a number of suggested improvements to the structure of the new Regulations, most of which we believe we have implemented. In particular, we have numbered entries in the tables for ease of reference.

A number of water authorities contacted us regarding the removal of Regulation 7, which would have added a significant regulatory burden to the treatment of sewage sludge kept within the curtilage of a sewage treatment works. We remain of the view

that these regulations are not necessarily the most appropriate vehicle for the provision; however we acknowledge that its removal had consequences which we had not previously considered or consulted on. We have therefore reinstated it as regulation 3(2) and inserted a related amendment to the Environmental Permitting (England and Wales) Regulations 2010. We will consider the issue further when the regulations are reviewed.

Question 25 - Is the proposed hierarchy clear and easy to follow? Please highlight any conflicts between the tables, or perverse consequences of the proposed hierarchy.

Because waste is classified according to place of production and also by composition, confusion can occur when a waste type listed in one category is produced at a type of premises listed in another.

A number of points of clarification were raised, which we believe we have addressed in the new regulations by means of clearer definitions and exceptions within the tables: it is made clear, in the event of different classifications resulting in inconsistent treatment, which classification is to take precedence.

Additional issues raised

A number of consultees raised additional issues which were not directly associated with specific consultation questions, and these are addressed below.

Asbestos

We have made no change to the provisions for charging for the collection and disposal of household asbestos; it continues to be included in the list of household wastes for which local authorities may make a charge for collection but not for disposal.

However, we are aware that there has been some confusion on how widely the definition of 'household asbestos' should be applied in respect of construction and demolition waste arising from DIY undertaken by householders.

In 1997, the then Department for Transport issued guidance on household asbestos which was endorsed and re-issued by Defra in 2004. This guidance is now out of date in parts, particularly where it refers to legislation, however the general conclusion is still broadly in line with current policy – with the obvious caveat that the interpretation of legislation is for the Courts and the guidance is not binding on local authorities.

The guidance states that:

... it is the Department's view that asbestos waste from a domestic property which is separately identifiable as such (e.g. ironing board mats or fire blankets), or asbestos waste from a domestic property which arises either from small-scale DIY-type tasks or work of a type which a building contractor would normally not be engaged to carry out, is household waste ...

Asbestos arising from building alteration works for which a building contractor is, or would normally be, engaged to carry out should, in our opinion, always be treated as industrial waste. Licensable tasks (such as work involving sprayed asbestos, lagging or insulating boards) should always be carried out by a contractor licensed by the Health and Safety Executive (HSE) and should therefore always be classed as industrial waste. Paragraph 1 of Schedule 1 of the new Controlled Waste Regulations defines all “construction” as including improvement, repair or alteration, and item 9 of the table in paragraph 3 of that Schedule classifies construction waste as ‘industrial’ waste. Local authorities are not required to collect industrial waste, and may charge the full cost of collection and disposal if they do so.

When defining ‘small-scale DIY-type tasks’ we suggest that local authorities consider whether the works are of a type and extent that an ordinary householder with no specialist building skills would normally be able to undertake. If householders seek advice from their local authority, we would ask local authorities to refer them to the Government’s current guidance¹ that asbestos should only be removed if repair is not possible or the material is likely to be disturbed, and that they should always seek professional advice before thinking of removing asbestos materials.

Local authorities continue to have a duty to collect such household items, and may make a charge for their collection but not for their disposal. Waste Disposal Authorities should continue to provide appropriately licensed facilities for householders to dispose of household asbestos, and may institute any controls they deem necessary on access in order to prevent disposal of industrial waste.

Charges by private operators

Several consultees asked whether they were, under the current Regulations, entitled to free disposal from their waste contractors. The legislation only sets the charging framework for local authority waste services; commercial waste operators are free to set their own fees. Any premises which choose to use a commercial waste operator, are, and will continue to be, liable to pay the full fees agreed in their contract for their waste collection and disposal.

Recycling Credits

The recycling credit scheme was an early initiative to incentivise recycling of household waste by local authorities and by third parties (e.g. community groups, businesses and other organisations carrying out recycling activity). In the absence of a direct charge for collecting or disposing of household waste (with minor exceptions), there was no direct financial incentive to avoid collection or disposal costs by recycling waste instead. The scheme’s purpose is to make available to recyclers the savings in disposal and collection costs which result from recycling household waste.

Under the new rules, local authorities may choose to make a direct charge for the disposal of waste. Where the authority chooses to make differential charges for the disposal of recyclates and residual waste, recyclers will receive a direct financial benefit by means of reduced disposal charges. Alternatively, authorities may choose

¹ http://www.direct.gov.uk/en/HomeAndCommunity/Planning/DoingWorkYourself/DG_10022562

to charge a flat rate for all waste, in which case recycling credits will continue to be payable to recyclers on the authority's savings in disposal costs.

Wales

Government response to the consultation in Wales on proposals to amend and update the Controlled Waste Regulations (1992)

Introduction

We should like to thank everyone who contributed to our review of the Controlled Waste Regulations (1992) – whether by sending a formal written response, or by being involved in the workshops and meetings which helped to shape the consultation document.

The report containing the summary of responses to the formal written consultation is available at:

<http://wales.gov.uk/consultations/environmentandcountryside/schedule2waste/?lang=en&status=closed>

This chapter provides the Welsh Government's response to the issues raised and outlines how they have influenced the final version of the amendment to the Controlled Waste Regulations 1992.

The majority of respondents agreed with most of our proposals, and we intend to legislate accordingly in those areas. This report addresses the issues where there was less consensus among consultees, where consultees have convinced us that our intended approach was wrong, or where there were significant misunderstanding of the purpose and effect of the proposals.

We must begin by re-iterating that our proposals make **no change to the charges that local authorities may make to householders**. All our proposed changes affect only premises occupied by institutions and businesses.

The Controlled Waste Regulations (England and Wales) 2012 completely revoke The Controlled Waste Regulations 1992

Option 1

Do you agree with our assessment that publishing guidance on the current CWR rather than amending the regulations would not be an effective means of tackling the problems with the legislation? If not, please set out why you would prefer guidance.

All of the respondents answered this question and they all agreed that issuing guidance on the existing regulations would not resolve the problems with the legislation, as previously provided guidance has not been effective.

We acknowledge that the majority of the waste affected by this change originates in the public sector, and we believe that it is right that budgets for waste disposal should lie with the body responsible for creating the waste. This will increase the transparency of public budgets, remove the current insulation of public bodies from incentives to reduce waste and increase recycling, and remove local authorities' open-ended liability to pay for the disposal of waste over which they have no control.

In light of the lack of support for guidance from the majority of respondents, and in the absence of any additional evidence which would suggest that guidance would be effective, the government has rejected option one.

Option 2

Question 1: Do you agree that waste from tents should be classified as commercial waste?

It was agreed by all respondents to the consultation that campsites are leisure businesses and should be treated in the same way as other businesses in respect of waste disposal charging, and so we intend to legislate accordingly.

We appreciate that there may be specific circumstances where local authorities may wish to waive fees on certain sites, however, we consider that the legislation gives local authorities sufficient flexibility to allow them to waive fees for commercial waste if they feel that it is justified.

Note: We are not aware of any case where a person is using a tent as their permanent domestic accommodation, however, in such an event, we would expect local authorities to exercise their discretion and consider whether it would be appropriate to treat such a tent as a domestic property in the same way as a caravan, boat or vehicle which is used for living accommodation.

Question 2: Do you agree that waste from caravan sites or parts of caravan sites, not licensed for permanent domestic accommodation, should be classified as commercial waste?

There was overwhelming support for this proposal and so we intend to legislate accordingly.

We would like to clarify that there is no change to the charges local authorities can make for handling waste from domestic caravans. It is considered a matter for local authorities to decide how best to apply charges to mixed-use sites and avoid double-charging caravan owners who also pay council tax.

Question 3: Do you agree that waste from properties used for the provision of self-catering accommodation and registered for business rates should be classed as commercial waste?

There was overwhelming support for this measure from the responses to the consultation. The Welsh Government intends to legislate accordingly.

Note: Please note the policy decision is different in England and Wales

Question 4: Do you agree that local authorities should be entitled to charge charities for disposal of the waste they produce?

Only one response was received from the charity sector in Wales, opposing this measure. All the other respondents were from local authorities, and in agreement that they should be entitled to charge charities for disposal. However, many were also in agreement that this should be at the local authorities discretion.

We therefore intend to take forward our plans to allow local authorities to exercise discretion in charging for waste disposal from charities in their area, as they are answerable to local taxpayers for how their money is spent.

Question 5: Do you agree that waste from premises used for public meetings should be classified as commercial waste?

No comments were received from the community sector on this measure. Local authorities did agree that waste from premises used for public meetings should be classified as commercial waste.

Local authorities did highlight that there would be difficulty when attempting to deal with waste from buildings such as public halls, as they are used for public meetings, clubs etc and organisations such as playgroups. We accept that many such premises exist on very tight budgets and provide an important service to their communities.

The wider government desire to support community groups is detailed in One Wales Programme of Government and in the Voluntary Sector Scheme - the Welsh Government makes a commitment to enhance and support the way in which we work with the third sector in Wales. Therefore we have decided to withdraw this proposal. Premises used wholly or mainly for public meetings will, therefore, continue to be liable to pay for the collection of their waste but not for its disposal.

We would encourage these premises to work closely with their local authority to reduce the waste they produce and to recycle as much as possible, thereby reducing both collection and disposal costs.

Questions 6: Do you agree that waste from Royal Palaces should be classified as commercial waste? and

Question 7: Do you agree with the reclassification of non-clinical waste from GP surgeries?

Our proposal to categorise waste from Royal Palaces as commercial waste and the reclassification of non-clinical waste from GP surgeries received unanimous agreement from all respondents. We intend to legislate accordingly.

Question 8: Do you agree that local authorities should have the power to charge educational institutions for disposal of their wastes?

There was unanimous agreement from all respondents that local authorities should be entitled to charge for disposal. As a result, we intend to legislate to treat educational establishments as commercial waste.

Note: Please note the policy decision is different in England and Wales.

Question 9: Do you agree that litter collected on premises occupied by educational establishments should be charged for in the same way as other non-hazardous waste generated on the site?

Our proposal to allow local authorities the power to charge educational establishments for the litter collected on their premises , received unanimous support from respondents. We intend to legislate accordingly.

Question 10: Do you agree that local authorities should have the power to charge hospitals and nursing homes for disposal of their waste?

This proposal was supported by all the respondents of the consultation. We have however several queries over the status of waste generated by people who are residents on site but who pay council tax.

We acknowledge that many sites are mixed-use, with staff housing located on the same campus as healthcare facilities. In general, we consider that there should be no charge for the collection or disposal of waste from domestic properties which are liable for council tax, where their waste is collected separately from other waste on the site. Waste from multi-occupancy residential buildings should generally be treated as being from a residential hostel for the purposes of charging.

However, given that large sites may have many permutations of domestic and non-domestic occupancy and use, including some uses which are commercial and profit-making, we believe that it is best to give local authorities the power to decide on the most appropriate charging structure for individual premises.

Question 11: Do you agree that the term ‘residential home’ is equivalent to ‘care home’, and that ‘nursing home’ is equivalent to ‘care home with nursing’?

We acknowledge the concerns of respondents who wanted the new Regulations to use the modern terminology, as set out in the Care Standards Act 2000, however, as explained in the consultation document, this would require amending the Environmental Protection Act 1990 (EPA). As amendment of the EPA, which is primary legislation, is not currently on the government’s legislative agenda, it is likely to take a very long time to amend, and this would not meet the desire for an early resolution to the problems with the Controlled Waste Regulations, which was expressed very strongly at the informal consultation stage.

Generally, respondents were content that the terms were equivalent, and we therefore ask users of the regulations to treat them as such.

Question 12 - Do you agree that local authorities should have the power to charge residential homes for disposal of their waste?

This proposal was fully supported by all the respondents.

The terms ‘residential home’ and ‘nursing home’ in the EPA were drawn from the Registered Homes Act 1984. In this legislation, residential homes are defined as

providing residential accommodation with both board and personal care. Although healthcare legislation has moved on, our view is that it was clearly the intention of Parliament at the time of the introduction of the EPA to restrict the definition to premises which provide accommodation, board and care. We do not therefore consider that groups of self-contained domestic accommodation, such as sheltered housing estates, could generally be classed as a 'residential home' for the purposes of the Controlled Waste Regulations.

However, given the variety of possible permutations of occupancy and use, we believe that local authorities should have the discretion to decide on the most appropriate charging structure for individual premises, but should bear in mind any contribution towards waste collection and disposal which is already made by residents or owners when setting fees.

Question 13 - Do you agree that local authorities should have the power to charge penal institutions for disposal of their waste?

All of the respondents supported this proposal.

While we have retained the household classification for waste from penal institutions, local authorities are allowed to charge for both collection and disposal of waste from these premises.

Question 14 - Do you agree that decisions of collection and disposal charging are best made by individual local authorities, and therefore the discretion on whether to charge or not should be retained for collection and extended to the proposed new power to charge for disposal?

This proposal received one response which was not in favour of this measure. All other respondents agreed.

It is our belief that local authorities are best placed to decide whether, and how, to subsidise the operations of organisations which bring benefits to their area. We do not believe that government should make blanket exemptions in law, or make issue guidance which constrains the decision-making powers of local authorities; they are directly accountable to local people, and should make decisions based on local needs.

We are aware that this will lead to different charging practices in different areas of the country, but we consider that this is a positive outcome. Different places have different needs and priorities, and we should not seek to impose one-size-fits-all solutions.

Paragraph 4(3)(b) of Schedule 1 of these regulations allows Waste Disposal Authorities to claim reimbursement for disposal. The decision remains with local authorities as to whether they wish to pass the charge for disposal on to their customers.

Question 15 - Is there any reason why the duty to make arrangements, if asked, to collect waste from institutions listed in the table at paragraph 4 of the Schedule should not be retained?

There were no reasons given to withdraw the duty which we considered would override the public health interest in ensuring that these institutions continue to have guaranteed access to waste services.

There were a number of questions raised about how this duty should be met in practice, and how costs should be met.

The continuing duty to arrange for collection of this waste in no way precludes local authorities from making a charge which covers the full cost of providing the service. It should be noted that the duty is 'to make arrangements' to collect the waste; they may arrange to do this by using commercial waste operators. However, the *duty* remains with the local authority and so, when premises ask the local authority to collect their waste, it is the local authority who must contract with a commercial waste operator, not the premises.

Where the local authority provides the waste collection service, or contracts with a private operator to provide the service, they may use their powers under Sections 46 and 47 of the EPA (for household and commercial waste, respectively) to set the terms of the service, including frequency of collection , type of receptacle and requirements to separate waste for recycling. These requirements must be reasonable in the context of the premises being served, and not merely the same requirements as are placed on domestic householders.

Question 16 - Do you agree with the principle of postponing the introduction of disposal charging? If so, do you consider twelve months to be an appropriate period of time?

Again, this was supported, by all the respondents. We have taken longer than initially expected to consider the consultation and make changes where appropriate. However, we consider that the consultation process has ensured that customers have had due notice of the direction of travel and therefore intend for the changes to the charging powers to take effect from April 2012 as proposed.

Question 17 - Do you think that the current definition of clinical waste in the regulations is useful? If not, what would you consider to be a better definition?

It was generally agreed that the definition of clinical waste was not particularly useful in classifying material. The majority of respondents who suggested improvements wanted the regulations to be compatible with the European Waste Catalogue definitions.

We have therefore refined the definition of 'clinical waste' in agreement with colleagues in the NHS in Wales, to make it more consistent with the Lists of Wastes regulations and with current guidance on clinical and offensive wastes. Legislation cannot resolve all the practical issues associated with identifying such waste, and we encourage local authorities and health care providers to work together to ensure that waste created by medical treatment in the home is handled safely and appropriately.

Question 18 - Is the new definition of a 'residential hostel' clearer? Does it exclude any types of hostel which you consider should be included?

All of the respondents agreed that the new definition is clearer. Some local authorities asked for greater clarity on specific types of hostel, in particular Youth Hostels and Ministry of Defence Single Living Accommodation (army barracks).

We consider that the new definition is sufficiently clear that the property must be the main residence of its occupants. A hostel providing short-term holiday accommodation, such as a youth hostel, would therefore not generally be classed as a 'residential hostel'.

In the case of Single Living Accommodation, we believe that the majority of premises will be classed as residential hostels. However the Ministry of Defence provides a variety of types of accommodation for service personnel and it would not be practicable to capture all of these in legislation. Similarly, most shared accommodation provided for hospital staff will meet the definition of a 'residential hostel', but there may be cases where such a definition is not appropriate. Local authorities will, therefore, need to exercise some judgement on individual premises where the classification is not obvious.

Note: The definition covers premises providing temporary accommodation as part of civil defence, natural disaster or violence – as the residents are in temporary accommodation because they "are unable to live at their permanent address."

Question 19 - Do the new regulations make it clear that waste arising from domestic caravans and vehicles at a transit site is household waste?

Waste from caravan and mobile home sites for gypsies and travellers are classified as household waste under paragraph 2 of Schedule 1. As with any other collection of household waste, authorities may apply reasonable terms to the collection of waste from caravan sites, by issuing a notice under section 46 of the Environmental Protection Act 1990, which allows local authorities to require occupiers to place waste for collection in receptacles of a kind and number specified.

Local authorities may make whatever arrangements they deem necessary to ensure that the waste being presented for collection by any user of the household waste collection has not arisen from commercial activity.

Question 20 - Do you agree that charity shops and re-use organisations should benefit from free waste disposal?

The majority of local authorities disagreed with this proposal, mainly on the grounds of cost to local taxpayers. They noted that local circumstances play a huge part in deciding what is appropriate and felt that this should be a local issue.

We believe these organisations play a crucial role in facilitating re-use and diverting used goods away from the waste stream, as the majority of items donated to charity shops and re-use organisations would otherwise probably have been discarded and disposed of in domestic waste. Their activities reduce the cost to local authorities, and hence to local taxpayers, of collecting and disposing of used items.

We therefore continue to believe that it is not appropriate for charity shops and re-use organisations to pay for the disposal of waste which originated in domestic properties.

In response to concerns about a possible subsidy to commercial re-use businesses, we have amended the definition to restrict free disposal to charities, community interest companies and not-for-profit organisations.

Question 21 - Do you consider that the restriction of free waste disposal to waste originating from a domestic property is practical? and

Question 22 - If you are a waste disposal authority, would you be willing to accept all goods from charity shops for free disposal in order to reduce the administration burden? If so, do you think the legislation should refer to all goods, rather than specifying goods originating from domestic properties? and

Question 23 - Are any safeguards necessary to ensure that commercial waste is not channelled through charity shops and reuse organisations in order to avoid disposal charging?

While it was noted that there could be an administrative burden on both local authorities and charities in determining the source (ie household or commercial) of the waste. Local authorities did overwhelming agree that the disposal of commercial waste from charities should not be free. Charity shops also noted that there may be difficulties in separating commercial waste from household waste.

While many respondents felt that safeguards were necessary, it was not clear that those safeguards could or should be included in legislation.

After consideration, we have concluded that the handling of unusable donations from commercial sources is best left to local discretion. Local authorities will therefore have the right to charge for the disposal of such waste, but where they choose to exercise that right, they should give charity shops and re-use organisations clear guidance on the records they need to keep in order to ensure that they are not charged for the disposal of waste originating from households.

Question 24 - Do you agree that the new structure is clearer? Please identify any wastes which are missing from the new Schedule which you believe should be listed in these Regulations.

We received a number of comments on the interpretation of household waste. One query relating to the waste from premises forming part of a university, school or other educational establishment and waste from premises forming part of a hospital or nursing home which we have addressed in this document (questions 10, 11 and 12 and question 18).

An issue relating to whether or not waste from places of worship, included waste generated though church halls. A definition of a place of worship (which includes Church Halls) has been included in the regulations. Premises used wholly or mainly

for public meetings will continue to be liable to pay for the collection of their waste but not for its disposal.

One water authority contacted us regarding the removal of Regulation 7, which would have added a significant regulatory burden to the treatment of sewage sludge kept within the curtilage of a sewage treatment works. We remain of the view that these regulations are not necessarily the most appropriate vehicle for the provision; however we acknowledge that its removal had consequences which we had not previously considered or consulted on. We have therefore reinstated it as regulation 3(2) and inserted a related amendment to the Environmental Permitting (England and Wales) Regulations 2010. We will consider the issue further when the regulations are reviewed.

Question 25 - Is the proposed hierarchy clear and easy to follow? Please highlight any conflicts between the tables, or perverse consequences of the proposed hierarchy.

Because waste is classified according to place of production and also by composition, confusion can occur when a waste type listed in one category is produced at a type of premises listed in another.

A number of points of clarification were raised, which we believe we have addressed in the new regulations by means of clearer definitions and exceptions within the tables.

One consultee raised the issue of asbestos from domestic properties as part of their response to this question. Asbestos is addressed at the end of this report.

Additional issues raised

A number of consultees raised additional issues which were not directly associated with specific consultation questions, and these are addressed below.

Asbestos

We have made no change to the provisions for charging for the collection and disposal of household asbestos; it continues to be included in the list of household wastes for which local authorities may make a charge for collection but not for disposal.

However, we are aware that there has been some confusion on how widely the definition of 'household asbestos' should be applied in respect of construction and demolition waste arising from DIY undertaken by householders.

In 1997, the then Department for Transport issued guidance on household asbestos which was endorsed and re-issued by Defra in 2004. This guidance is now out of date in parts, particularly where it refers to legislation, however the general conclusion is still broadly in line with current policy – with the obvious caveat that the interpretation of legislation is for the Courts and the guidance is not binding on local authorities.

The guidance states that:

... it is the Department's view that asbestos waste from a domestic property which is separately identifiable as such (e.g. ironing board mats or fire blankets), or asbestos waste from a domestic property which arises either from small-scale DIY-type tasks or work of a type which a building contractor would normally not be engaged to carry out, is household waste ...

Asbestos arising from building alteration works for which a building contractor is, or would normally be, engaged to carry out should, in our opinion, always be treated as industrial waste. Licensable tasks (such as work involving sprayed asbestos, lagging or insulating boards) should always be carried out by a contractor licensed by the Health and Safety Executive (HSE) and should therefore always be classed as industrial waste. Paragraph 1 of Schedule 1 of the new Controlled Waste Regulations defines all "construction" as including improvement, repair or alteration, and item 9 of the table in paragraph 3 of that Schedule defines construction waste as 'industrial' waste. Local authorities are not required to collect industrial waste, and may charge the full cost of collection and disposal if they do so.

When defining 'small-scale DIY-type tasks' we suggest that local authorities consider whether the works are of a type and extent that an ordinary householder with no specialist building skills would normally be able to undertake. If householders seek advice from their local authority, we would ask local authorities to refer them to the Government's current guidance² that asbestos should only be removed if repair is not possible or the material is likely to be disturbed, and that they should always seek professional advice before thinking of removing asbestos materials.

Local authorities continue to have a duty to collect such household items, and may make a charge for their collection but not for their disposal. Waste Disposal Authorities should continue to provide appropriately licensed facilities for householders to dispose of household asbestos, and may institute any controls they deem necessary on access in order to prevent disposal of industrial waste.

Other comments

One consultee noted that whilst waste from premises forming part of a university, school or other educational establishment and waste from premises forming part of a hospital or nursing home appear in table 4 – *Household waste for which collection and disposal charges may be made* - they do not appear in the other tables and therefore have not been identified as household waste.

It is to be noted that schools and other establishments mentioned above are classified as "household" waste in primary legislation (section 75(5)(d) and (e) Environmental Protection Act 1990), and thus do not need to be classified in these regulations. What the regulations do however, is to treat household waste in certain circumstances, as commercial waste, so that a charge can be made for disposal, as well as collection.

² http://www.direct.gov.uk/en/HomeAndCommunity/Planning/DoingWorkYourself/DG_10022562