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Review of Schedule 2 of the Controlled Waste Regulations (1992)

Proposals for amending and updating the legislation

A consultation document issued jointly by Defra and the
Welsh Assembly Government



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



defra
Department for Environment
Food and Rural Affairs

Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London SW1P 3JR
Telephone 020 7238 6000
Website: www.defra.gov.uk

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Information about this publication is available from:

Municipal Waste Policy: CWR Review Team
Defra
6C Ergon House
Horseferry Road
London SQ1P 2AL

Tel: 0207 238 1679

Email: cwrconsultation@defra.gsi.gov.uk

This document is also available on the Defra website:
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Executive Summary

In June 2010 the Secretary of State for Environment, Food and Rural Affairs, Caroline Spelman, announced the Government's intention to conduct a fundamental review of Waste Policies. The review is considering, all aspects of waste policy delivery, to ensure that we are taking the right steps towards creating a 'zero waste' economy, where resources are fully valued, and nothing of value gets thrown away.

The Minister for Environment, Sustainability and Housing, Jane Davidson AM launched the Welsh Assembly Government's revised overarching waste strategy document for Wales "Towards Zero Waste", also in June 2010. It describes at a high level how Wales will deal with waste to produce benefits for not only the environment, but also for its economy and social wellbeing.

A full review of the Controlled Waste Regulations (1992) ("the CWR") has been taking place since 2008, and the Government and Assembly have decided to consult now on proposed changes as the CWR form a significant barrier to both administrations achieving these aims in respect of waste arising from certain institutions.

Schedule 2 of the CWR lists various types of 'household waste' for which local authorities can make a charge for collection. 'Household waste' in this context includes both waste from households and waste from various non-domestic institutions, including schools, hospitals and prisons. Under the current legislation, local authorities have a duty to collect waste from these 'Schedule 2 institutions' if requested, but can only charge for the collection of the waste and not for its disposal.

The proposals in this consultation document only relate to charging powers for non-domestic 'household waste'. No proposals are being made in relation to charging for collection of waste arising from domestic properties and this aspect has not been reviewed.

In 1992, disposal costs were very small in relation to collection costs. Times have changed and disposal now forms the largest part of the overall cost of managing household waste, and costs are continuing to rise. By insulating certain organisations from the full cost of handling their waste, the CWR are a barrier to more sustainable waste management and are causing significant problems for both local authorities and private-sector waste contractors. They restrict local authorities' ability to provide services and make funding decisions based on local priorities. In addition, the CWR are often difficult to interpret, and some provisions have become outdated.

The current legislation also fails to make clear provision for charity shops and re-use organisations, with the result that many are treated as commercial enterprises when it comes to waste charging. Defra and Welsh Assembly Government wish to acknowledge the contribution these organisations make to sustainable waste management by encouraging and facilitating the re-use of surplus goods.

We propose to amend the legislation to address these issues, in particular:

- Giving local authorities the power to charge for disposal of non-domestic 'Schedule 2' waste;
- Retaining local authorities' discretion on charging so that they can make decisions best suited to local circumstances;
- Providing free disposal to the charity shops and re-use organisations who help to reduce household waste by encouraging re-use;
- Making the regulations easier to use by restructuring, clarifying terminology and updating references to other waste legislation;
- Retaining local authorities' duty to collect, if requested, waste from institutions currently listed in Schedule 2, in the interests of public health.

This consultation seeks your views on draft new Regulations to replace the current Controlled Waste Regulations 1992 (CWR). Section 7 of this document sets out our detailed proposals.

Section 1: Scope of the Review held between 2008 and 2010

1. The review of the legislation has largely been confined to looking at amendments to the provisions relating to non-domestic properties listed in Schedule 2.
2. **The proposals in this consultation only relate to charging powers for non-domestic 'household waste'. No proposals are being made in relation to charging for collection of waste arising from domestic properties and this aspect has not been reviewed.**
3. Defra and Welsh Assembly Government have conducted the review with the help of many local authorities and representatives of their customers. We are very grateful to all those who have given up their time to help us understand their concerns.
4. The purpose of the review was to identify the flaws and weaknesses in the current CWR, gain an understanding of the impacts on local authorities if they remain unaltered, consider how they can be brought into line with modern waste legislation, further the wider sustainability aspirations of Defra and Welsh Assembly Government, and improve the transparency and accountability of public funding. In addition, the review can now reflect the Coalition Government's aspiration to encourage greater involvement of local people in local decision making in England.
5. We are also taking the opportunity to simplify the structure of the CWR, removing defunct regulations and clarifying terminology.

Section 2: Policy developments and legislative changes

Sustainable Waste Management

6. Defra and Welsh Assembly Government are both committed to fostering sustainable, low carbon and resource efficient patterns of consumption and production. This includes working towards a Zero Waste Economy, where products and services are designed, produced, used and disposed of in ways that minimise carbon emissions, waste and the use of non-renewable resources.
7. An important element of this objective is the sustainable management of waste: treating waste as a resource and like all resources, having been extracted from the environment it should, wherever possible, be retained within the production cycle. In this way the impact on the environment of future production can be minimised.
8. Since the introduction of the CWR in 1992, other legislation and initiatives have been introduced and updated to drive this aspiration at both European and UK level. In particular, two key concepts underpin our approach to waste management: the waste hierarchy and the “polluter pays” principle.

The Waste Hierarchy

9. The waste hierarchy is a way of identifying the most sustainable waste management practices in terms of their environmental impact and it is the expressed intention of the EU and the UK to drive the way waste is handled up the waste hierarchy wherever that is practicable.

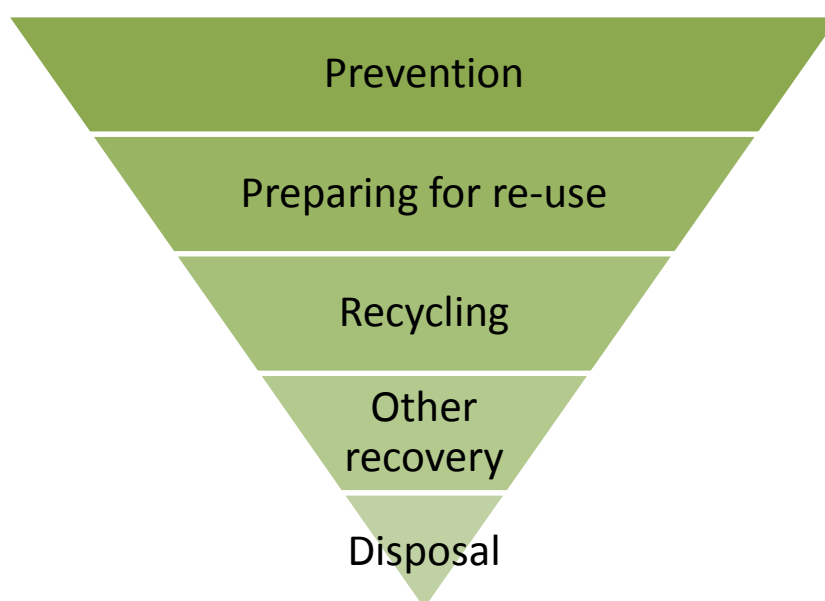


Figure 1. The Waste Hierarchy

The Polluter Pays Principle (PPP)

10. The polluter pays principle recognises that those that pollute should pay for the damage/impact their actions have on the environment and this extends to the waste we all produce. Since 1994 the Waste Framework Directive (WFD) has underpinned all waste legislation. Article 15 of the WFD states:
'In accordance with the 'polluter pays' principle, the cost of disposing of waste must be borne by:
 - a) *The holder who has waste handled by a waste collector or by an undertaking as referred to in Article 9; and/or*
 - b) *The previous holders or the producer of the product from which waste came.*

11. It is up to individual Member States to decide how to ensure the polluter pays and it is not necessary to make payment directly relate to the quantity of pollution, in this case waste, produced.

Section 3: The Current Legislation

The Environmental Protection Act 1990

12. Section 75(5) of the Environmental Protection Act 1990 (EPA) defines household waste, which in addition to waste from domestic properties includes waste from some non-domestic premises such as schools and hospitals.
13. Section 75(8) allows regulations to be made providing that other waste is to be treated as household waste. The Controlled Waste Regulations 1992 are regulations made under section 75(8) and Schedule 1 adds other types of non-domestic premises, such as prisons, to the list
14. Under section 45(1) of the EPA a waste collection authority (WCA) is required to make arrangements for the collection of household waste arising in its area. Section 45(3) stipulates that no charge shall be made for the collection of household waste except in cases prescribed by regulations. The Controlled Waste Regulations 1992 are also made under section 45(3) and Schedule 2 lists the types of household waste for which such a collection charge may be made.

The Controlled Waste Regulations (1992)

15. Schedule 2 of the CWR allows Local Authorities to make a charge for the collection (but not disposal) of certain types of waste from households that, for a variety of reasons cannot be included in the general waste collections, such as heavy or bulky items, garden waste, asbestos or dead domestic pets.
16. Also included in Schedule 2 is waste from the following types of premises:
 - Hospitals and nursing homes
 - Residential hostels
 - Residential homes
 - Schools, universities and other educational facilities
 - Caravan sites and campsites
 - Self catering holiday accommodation
 - Prisons and penal institutions
 - Public halls
 - Royal palaces
 - Premises occupied by charities and used for charitable purposes.

We do not propose to change the regulations regarding charging for wastes arising from domestic properties¹. Throughout the remainder of this document 'Schedule 2 waste' refers only to wastes from non-domestic properties.

¹ Therefore the wastes covered by paragraphs 1, 2, 3, 4, 7, 8, 10, 11 & 12 of Schedule 2 of the CWR are outside this consultation process.

17. Local authorities have a duty to arrange for the collection of all wastes listed in Schedule 2, if asked to do so by the holder of the waste. The CWR allow the collection authority to charge for providing the collection but disposal authorities have no legal power to charge for disposing of the waste.

Section 4: Problems with the current regulations

Confusing structure and outdated terminology

18. Our research and informal consultation showed that there is considerable confusion around the correct interpretation of the CWR among local authorities and their customers. Consultees told us that they sometimes found it difficult to classify types of waste being produced by Schedule 2 premises, and also how to identify whether certain premises were covered by Schedule 2 when the CWR use terms to describe premises that are no longer in use elsewhere. It is also clear that the letter Defra sent to all waste authorities in England, in October 2007², clarifying the Department's view of the legislation, has not succeeded in removing this confusion.
19. It is never desirable to have legislation that allows for more than one interpretation. Evidence from the Audit Commission shows that not only do interpretations of the CWR vary across the country, but there are often differences within single counties. To date there is no case law covering these issues to guide decision making.
20. These problems of definition and interpretation are addressed in our detailed proposals in Section 7 below.

Failure to implement the Polluter Pays Principle

21. Under the current CWR commercial and industrial waste producers³ have to pay for collection and disposal if they engage local authorities to handle their waste, while residents pay for their waste collection and disposal through their taxes. So the polluter pays principle, with its requirement that those that pollute should pay for the impact their actions have on the environment, is satisfied for these waste sources.
22. However, the cost of disposing of Schedule 2 waste is borne by local government rather than Schedule 2 premises so to this extent the polluter pays principle is being applied to a lesser degree.

Market distortion

23. The cost of waste disposal is increasing. The Landfill Directive demands pre-treatment of all waste sent to landfill, and Landfill Tax, which is currently £48/tonne, will rise to £80 per tonne by 2014.⁴
24. In 2008, for the first time in the UK, the average cost of waste disposal exceeded the cost of collection, largely as a result of increasing Landfill Tax.

² Available at <http://www.defra.gov.uk/environment/waste/localauth/documents/letter-la-cwr.pdf>

³ Those whose waste falls under schedules 3 & 4.

⁴ The Coalition Government has committed to increase Landfill Tax on active waste by at least £8/tonne every year until at least 2014.

As a result, the option of using local authority services, and thus avoiding the costs of disposal charges, is becoming increasingly attractive for Schedule 2 institutions, even where more tailored services are available from the private sector.

25. As local authorities have a duty to collect Schedule 2 waste if requested, they are also required to bid in competitive tenders when requested. Since local authority bids can only include the costs of collecting the waste, there is a real danger of private waste contractors being undercut by unintended public subsidy, and the market for waste services being distorted by local authorities' inability to charge for disposal in these cases.

Constraining choice of Schedule 2 customers

26. The current situation has the unintended consequence of dissuading some Schedule 2 institutions from being more responsible in the way they handle their waste. Sustainable waste management practices may have significant set-up costs, when facilities have to be built and collection methodologies established. Free waste disposal significantly reduces the financial incentive on Schedule 2 institutions to reduce, reuse and recycle waste by insulating them from the full cost of dealing with their waste sustainably.
27. The Government and Assembly expect publicly funded institutions to play their part in working towards a zero waste economy. Their procurement choices are, however, necessarily constrained by costs. Some may therefore be settling for a service from their local authority which costs them less but is less optimised to their needs than one which could be provided by a private waste contractor. Such savings are largely artificial in that they simply transfer costs from one public budget to another and may lead to a greater overall cost to the taxpayer.
28. In addition, there is a lack transparency in respect of waste disposal budgets in both local authorities and publicly funded Schedule 2 institutions. Where institutions have made arrangements with private contractors, their waste disposal costs are being met by their own budgets, whereas the disposal costs of those institutions using local authorities are met through local authority funding.
29. For most private sector premises, the key driver to reduce the amount of waste they produce, and to sustainably manage what they can't avoid producing, is the increasing cost of waste disposal. The current CWR insulates institutions listed under Schedule 2 that use local authorities for their waste services from this cost.

Public funds subsidising private businesses

30. The EPA and the CWR do not make a distinction between publicly funded, third-sector or profit-making institutions. Consequently public funds are being used to subsidise the waste disposal costs of private-sector Schedule 2 institutions, and this subsidy has the potential to increase in the future.

Impacts on Local Authorities

Budgets and investment decisions

31. Schedule 2 institutions can opt into and out of local authority services whenever they choose which makes it difficult for local authorities to produce realistic budget forecasts, or plan future infrastructure needs. Local authority funding is set in advance and usually for a three year period. Unforeseen additional costs are very destabilising and cannot be recouped, because while future funding can include the additional costs for future spending, it does not allow for retrospective payments.
32. Many Schedule 2 premises produce large amounts of waste. Local authorities that are already operating at, or near, full treatment capacity would have to invest in additional infrastructure to meet the increased demand, so their costs would be far greater than just the additional cost of disposal.

Strategies and forward planning

33. To meet their landfill diversion obligations under Article 5(2) of the Landfill Directive, transposed into UK law by the Waste and Emissions Trading Act 2003 (WET), local authorities need to be able to plan effectively. Although the Government has announced that it has met the 2010 target we should not assume that current compliance means that we are bound to meet all our targets in the future.
34. Further progress is needed to meet the 2013 and 2020 targets, so Waste Disposal Authorities will need to continue to plan to divert waste from landfill so that they do not exceed the Landfill Allowance Trading Scheme (LATS) allowances allocated to them. These allowances have been allocated at a level that will help England to divert BMW as a contribution to the UK targets under the European Landfill Directive. Their plans to date have been drawn up using the best available predictions of the amount of waste arising in their area, and do not generally take into account a sudden increase in demand from Schedule 2 premises that currently use private contractors.
35. The current need for all publicly funded bodies to make cost savings, and use their resources as efficiently as possible, makes accurate assessment of local needs essential. There are many pressures on local authority budgets and the drive to be more sustainable in the way waste is managed does not come without a cost; waste treatment facilities require considerable investment.
36. Many local authorities are still in the process of putting the necessary infrastructure in place, therefore it is vital that they have a clear understanding of their needs and can allocate resources with confidence.

Section 5: Evidence Base

Research into current management arrangements for Schedule 2 waste

37. In order to inform the consultation process, early in 2009 Defra commissioned Enviros Consulting Ltd to conduct research into the current arrangements for the management of Schedule 2 waste.
38. The study included a telephone survey of all local authorities in England and Wales⁵ and data was also gathered from private waste contractors. The study provided a regional breakdown of the quantities of waste involved, how it is currently managed and helped assess the likely impact on local authorities.
39. A report of the research findings was published by Defra in November 2009 and is available at <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&ProjectID=16451&FromSearch=Y&Publisher=1&SearchText=W0308&SortString=ProjectCode&SortOrder=Asc&Paging=10#Description>
40. The key findings are –
 - A variety of interpretations of the CWR are in use across the country and this is affecting the services offered by local authorities and how they charge for them,
 - 75% of Schedule 2 waste originates in the public sector,
 - Many Schedule 2 premises are currently using private waste contractors,
 - Local Authorities' subsidy of non-domestic waste disposal is costing £29m,
 - They have a further potential liability of between £24m - £32m, including £10m to private or third-sector organisations, if all Schedule 2 premises chose to use the subsidised Local Authority waste service.

Informal consultation

41. Defra has been working with local authorities and representatives of the institutions affected by these regulations. Defra held a series of discussions with the government departments with policy responsibility for the main publicly funded producers of Schedule 2 waste and set up a representative Steering Group⁶ in early 2009.
42. During the late summer and autumn of 2009 Defra held four discussion workshops with representatives of local authorities, Schedule 2 customers, and private waste contractors to discuss the outcomes of the research, the problems with the current legislation and to seek their views on possible solutions.

⁵ 67% participated.

⁶ Made up of representatives from: waste collection and disposal authorities, LARAC and NAWDO, the government offices for the regions, the Welsh Assembly Government and bodies representing Schedule 2 institutions, both private and public sector.

43. The key conclusions of these workshops were:
- The legislation is unclear and difficult to interpret
 - The “polluter pays” principle should be applied to all waste producers.
 - Local Authorities should not have to pay the disposal costs of waste created by private sector organisations.
 - Organisations should be responsible for their own budgets, for making decisions on how their waste should be handled, and their choice of supplier. Local Authorities should not be given responsibility for those decisions.
 - Local Authorities wish to retain their duty to collect Schedule 2 waste, to ensure public health is protected.
 - Future developments should promote partnership working between Local Authorities and Schedule 2 producers.
 - There is a general will for legislation to be changed.
44. A summary report of the workshops is available on our website at <http://www.defra.gov.uk/environment/waste/localauth/documents/stakeholder-feedback.pdf> .

Section 6: Options for change

Baseline: Do Nothing

45. If the legislation remains unchanged, it is probable that the majority of Schedule 2 premises will eventually seek to have their waste collected by their local authority in order to reduce their own costs.
46. Disposal of Schedule 2 waste is currently costing local authorities around £29m per year. Our research suggests that if all Schedule 2 premises not currently having their waste collected by a local authority requested this service, it would add around 2% to the total quantity of waste local authorities have to collect, and cost an additional £24-£32m in disposal costs⁷.
47. The current legislation therefore leaves local authorities with a potential liability of up to £61m in disposal costs alone. Of this, around £10m is a potential subsidy to private-sector premises; this is unsustainable at a time when we are seeking to reduce the public-sector deficit.
48. Defra and Welsh Assembly Government do not consider this is a viable option as it does not resolve any of the issues with the legislation, as identified in Section 4. It has been considered as part of this review in order to provide a baseline against which to compare other options.

Option 1: Issue guidance

49. Further guidance on the existing legislation could be issued. This guidance would clarify the Department's interpretation of the law, assisting local authorities and their customers to understand some of the definitions.
50. We would consult widely on such guidance, and seek wherever possible to come to agreement with all interested parties. We do, however, consider that it would be unlikely that we could reach universal agreement on interpretation of all parts of the legislation. The guidance could not be a definitive legal interpretation, as only the Courts have that authority, and neither local authorities nor customers would be bound by it.
51. While this option would allow us to resolve some issues relatively quickly, definitive interpretation of the legislation would only be achieved through Judicial Review, which would be a lengthy and expensive approach for all concerned.
52. This option would not address the current problems surrounding transparency of public spending and the polluter pays principle.

⁷ Assuming they chose to fully charge all new customers for collection.

53. Defra and Welsh Assembly Government do not, therefore, consider that this is a viable option; however consultees' comments are welcome. If there is support for this option, we will consult again on the contents of the guidance.

Option 2: Introduce new Regulations to allow local authorities to charge for disposal of waste from 'Schedule 2' institutions.

54. Our preferred option is to repeal the Controlled Waste Regulations (1992) and make new Regulations in order to:
- Clarify definitions and make the legislation easier to understand and use
 - Bring this legislation into line with other more recent legislation
 - Give Local Authorities greater control over service provision and planning
 - Retain the ability of Local Authorities to make decisions on charging that are appropriate for the needs of their local area
 - Reduce a key constraint on the services local authorities can currently offer non-domestic premises by increasing the resources available to them
 - Provide greater transparency of public budgets and help foster greater local accountability
 - Give more control of waste disposal choices to Schedule 2 institutions, and remove the existing market distortions influencing their decisions
55. The drafting of new regulations affords an opportunity to clarify the descriptions of different premises, and update terminology. Clearer legislation will help local authorities and their potential customers reach common understandings of their respective rights and duties.
56. Local authorities find it very difficult to plan effectively when Schedule 2 institutions are able to drop in and out of their waste services, authorities would be better insulated from this if Schedule 2 institutions had to pay for waste disposal.
57. The Coalition Government has committed to deliver a radical decentralisation of power and greater financial autonomy to local authorities in England. It is right that local authorities have the power to make decisions regarding the types of waste collection services they provide, as well as whom, what and when they charge for those services, and how best to maximise the effectiveness of their resources while tailoring services to the particular needs of their customers. We therefore propose to give authorities the power to choose whether to charge for disposal of waste from non-domestic properties, mirroring the freedom they already have with regard to collection charges.
58. Welsh Assembly Government considers that the legislation is outdated and does not fully conform to the polluter pays principle. The Assembly government also has a duty to promote sustainable development; it therefore believes that new legislation is required.

59. By charging Schedule 2 institutions for disposal of waste, local authorities will be able to cover the costs of expanding and improving the waste services they offer to non-domestic premises, and potentially allow them to provide incentives to premises who participate in waste reduction and recycling initiatives. In turn, this will help reduce the amount of waste sent to landfill and increase participation in sustainable waste management initiatives.
60. Under the proposed new Regulations there will be much greater budgetary transparency than at present for both the local authority and publicly funded Schedule 2 institutions. Authorities will know that funding from central government for household waste disposal, is for waste from domestic premises only. While Schedule 2 institution budget holders will be better able to identify potential efficiencies and ways of reducing their costs by reducing waste, rather than the purely artificial measure of passing the responsibility on to another part of the public purse, as can happen under the current CWR.
61. By removing the advantage that those Schedule 2 institutions that currently use local authority waste services receive and ensuring that waste disposal budgets lie with waste producers, budget holders will no longer have their waste management choices constrained and will have greater freedom to decide on the most suitable waste management service for their institution.
62. However, it may seem unreasonable to suddenly impose a new cost on existing local authority customers without allowing them time to make provision for the additional charges or make alternative arrangements with private contractors. Therefore, a transitional period for may be appropriate and we seek your views on our proposal to delay the introduction of new powers to charge for disposal until April 2011.
63. Our detailed proposals for change are set out in Section 7 of this document.

Section 7: Details of proposed changes

64. A draft of the proposed Regulations is set out at the end of this section and should be read with the proposals when considering your responses. The Controlled Waste Regulations are made under section 75(8) of the Environmental Protection Act 1990 (EPA). 'Household waste', 'commercial waste' and 'industrial waste' are defined in the EPA, and these Regulations should be read in conjunction with the Act.
65. It is not possible to amend the EPA by means of these Regulations, so there are some issues raised during informal consultation that we have not been able to resolve fully, particularly in relation to some of the wording used by the Act. We have noted these instances in this section with explanations.
66. The proposals fall into three broad categories:
 - A. Changes to charging powers and transitional arrangements,
 - B. Changes and clarifications to definitions of premises or wastes to be classed as household waste, and
 - C. Changes to the structure and layout.
67. The proposals are set out in detail below, together with specific questions for consultees. Answering these questions will assist Defra and Welsh Assembly Government in analysing the responses to this consultation, but we welcome additional comments on any aspect of the proposed Regulations.
68. A complete list of questions can be found at the end of this document, for ease of reference.

A. Making new Regulations to allow local authorities to charge for the collection and disposal of waste from non-domestic premises.

69. In order to resolve the problems created by insulating certain institutions from the full costs associated with their waste, we are proposing to give local authorities the power to charge for the disposal, as well as collection, of certain wastes which are defined as 'household waste' in the EPA or in the CWR. In order to meet our consultees' aspirations for a prompt resolution of these problems, we are proposing to do this by introducing new Regulations.

Proposal A 1. To reclassify as 'commercial waste', waste from 'Schedule 2' premises that are not listed in section 75(5) of the EPA.

70. Waste from all these premises will be reclassified as 'commercial waste'. We do not consider that these premises should be insulated from the cost of disposing of their waste, and this reclassification will allow local authorities to charge for collection and disposal of waste if they consider it appropriate to do so.

71. The premises affected by this change are :

a. *Waste from a camp site and from tents pitched on land other than a camp site*

We consider that tents are holiday accommodation rather than domestic properties, and that waste arising from them should therefore be classed as 'commercial waste'. Note that waste arising from domestic properties located at a camp site, including domestic caravans on mixed-use sites, is classed as 'household waste'.

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

b. *Waste from a caravan which in accordance with any licence or planning permission regulating the use of the caravan site on which the caravan is stationed is not allowed to be used for human habitation throughout the year*

As with tents, we consider that such caravans are holiday accommodation and not domestic premises, and therefore their waste should be classed 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?

c. *Waste from properties used for the provision of self-catering holiday accommodation.*

Where properties are used in the course of a business, we consider that it is reasonable to treat the waste they produced as commercial waste. This

change will only affect properties rented out for 140 days per year that are registered for business rates. Properties which are liable for council tax, i.e. rented out for less than 140 days per year, will continue to be eligible to receive a normal domestic waste collection.

We also propose to include waste arising from moored vessels used for the provision of self-catering accommodation in this classification, to remove the current anomaly under which it is classed as industrial 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?

d. Premises occupied by a charity and used wholly or mainly for charitable purposes

We consider that it is for local people to decide how best to support charities in their area, and hence decisions on whether it is appropriate to charge premises for waste collection and disposal should rest with the local authority.

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

e. Premises used wholly or mainly for public meetings

Meeting places are clearly not domestic premises, and it is anomalous that waste arising from public meetings is currently treated differently to that arising from premises hosting other activities, such as premises occupied by clubs and societies.

We have also removed the reference to 'a hall' as the nature of the premises is not relevant.

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

f. Waste from a Royal Palace

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

g. GP surgeries

We propose to classify non-clinical waste arising from GP surgeries as commercial waste as there is some confusion over the current classification. At present, such waste would be given the default classification of 'industrial waste.' Local authorities would be required to collect the waste, if requested, and would be able to make a charge for its collection and disposal.

Clinical waste from GP surgeries would continue to be classed as industrial waste, and local authorities would not have a duty to collect this waste.

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

Proposal A 2. To reclassify as ‘commercial waste’ for the purposes of charging, waste from ‘Schedule 2’ premises listed in section 75(5) of the EPA as household waste or to be treated as household waste because of the Regulations.

72. Many of these premises produce large amounts of waste and should not be insulated from the cost of disposing of their waste when they use local authority services.
73. Section 75(8) of the EPA allows for regulations to be made which categorise how waste may be treated for the purposes of Part 2 of the Act, and we propose that the new Regulations will treat the wastes in this section as ‘commercial waste’ for the purposes of charging despite their classification as household waste for other purposes by section 75(5) of the Act.
74. For example waste collected from a hospital would be treated as ‘commercial waste’ for the purposes of charging. The waste would, however, continue to be classified as ‘household waste’ for any other legal and reporting purposes.
75. This means that local authorities will still be able to pay these premises recycling and reuse credits, where appropriate.
76. Local authorities will have the power to charge for collection and/or disposal if they consider it appropriate to do so.
77. The premises affected by this change are:

a. Premises forming part of a school, university or other educational establishment

We are aware that many schools would like better recycling facilities, but that many local authorities are unable to offer improved services without recovering the costs. The current insulation from disposal costs prevents some schools from looking for more appropriate services from private waste contractors. In addition, it provides financial advantage to privately-run educational facilities, some of which may be run for commercial profit.

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

Please also see paragraph 79, regarding the use of the phrase ‘premises forming part of’

b. Litter and refuse collected under section 89(1)(f) of the EPA.

Section 89(1)(f) of the Environmental Protection Act places a duty on the governing body of educational institutions to ensure that their land is, so far as is practicable, kept clear of litter and refuse. It is to be treated as household waste for other purposes.

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?

c. Waste from premises forming part of a hospital or nursing home

Many NHS Hospital Trusts use private waste contractors; however the current subsidy of disposal costs may be preventing some smaller facilities from looking for more appropriate services from private waste contractors.

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

Please also see paragraph 78 of this document regarding the use of the phrase 'premises forming part of', and paragraph 79 relating to the use of the terms 'nursing homes' and 'residential homes'.

78. We are aware that the wording of the current CWR has caused some confusion, particularly the phrase 'premises forming part of' which has been interpreted in a variety of ways. We regret that we are unable to address this problem as part of this proposal, as that is the wording used in the Environmental Protection Act and there is no power to change it by secondary legislation.

d. Waste from a 'residential home'

Please see paragraph 79 relating to the use of the terms 'nursing homes' and 'residential homes'.

Note on provisions relating to 'residential homes' and 'nursing homes'

79. The terms 'residential homes' and 'nursing homes' are no longer in use, and the Care Standards Act 2000 refers to 'care homes'. We regret that we are unable to alter the phrases used in the Environmental Protection Act by means of these Regulations, but consider that the term 'residential home' should be considered to be equivalent to 'care home' within the meaning of section 3 of the Care Standards Act 2000 and that 'nursing home' is equivalent to a care home with nursing.

80. Our proposals for 'nursing homes' are outlined in proposal A2 above, and we are proposing that waste from care homes should be treated in the same way.

Question 11. Do you agree that the term 'care home' is equivalent to 'residential home', and that 'nursing home' is equivalent to a care home with nursing?

Question 12. Do you agree that local authorities should have the power to charge residential homes (i.e. care homes) for disposal of their waste?

e. Waste from a penal institution

A number of institutions have invested in on-site recycling facilities and have made significant reductions in the waste they produce for disposal. As noted above, waste from penal institutions will retain its classification of 'household waste' for all purposes other than collection and disposal charging, and so will still be eligible for recycling credits.

We have removed the reference to prisons, as prisons are clearly penal institutions.

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

Proposal A 3. To retain local authorities' discretion on charging.

81. The Coalition government in England has committed to deliver greater financial autonomy to local authorities, and this also applies to waste management. We think that it's best for local authorities to have the freedom to determine their own charging strategies, informed by local needs and opinion and mindful of their local economies. We therefore propose to retain the waste collection authorities' discretion on whether to charge any particular institution or premises for collection, and to extend that discretion to waste disposal authorities charging for disposal.
82. The third column of the table in paragraph 4 of the schedule indicates which waste must be treated as being commercial waste for the purposes of making a reasonable charge for disposal and the entitlement of waste disposal authorities to be reimbursed by waste collection authorities for the disposal costs. Section 45(4) of the EPA gives local authorities the power to decide whether or not it is appropriate to charge for the collection and disposal of commercial waste.

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?

Proposal A 4. To retain local authorities' duty to collect, if requested.

83. This duty remains in the interests of public health, to ensure that a collection service will always be provided, even to those premises that are unable, for reasons of size or location, to secure a private waste collection service.

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?

Proposal A 5. To postpone the coming into force of provisions relating to disposal charging for a short period.

84. We acknowledge that most Schedule 2 institutions, particularly those in the public sector, have based their waste budgets on the current costs of the service they receive. They will need a period of time in which to make provision for additional charges from the local authority, and potentially to seek alternative provision from the private sector.
85. However, given the financial pressures on local authorities and market distortions that concern the private sector waste contractors, we would seek to make this period as short as possible. We therefore propose to introduce new regulations in April 2011, and for the provisions relating to disposal charging to come into force in April 2012, at the beginning of local authorities' financial year.

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?

B. Changes and clarifications to definitions of premises or wastes to be classed as household waste

86. The proposals in this section are designed to address the issues of outdated terminology, and to clarify the definitions of certain types of premises. We are proposing to include explicit references to premises whose classification has been unclear, and also to classify waste from properties used for the provision of holiday accommodation as commercial waste.

Proposal B 1. To consider the case for amending the definition of clinical waste

87. The CWR are unique in current legislation in defining the term ‘clinical waste’⁸, neither the waste industry nor health services use the term and it does not appear in the European Waste Catalogue.
88. We have not considered the definition of clinical waste as part of this review, to date, but we are aware that there may be potential for it to be updated. We would welcome any comments on this issue.

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?

Proposal B 2. To improve the definition of ‘residential hostels’

89. The proposed Regulations clarify that a residential hostel is one which provides accommodation only to people with no other permanent address. This definition excludes holiday hostels and temporary accommodation provided for workers, trainees or students who have permanent addresses elsewhere.
90. We propose a definition of residential hostel which includes those who provide accommodation for persons who may have a permanent address but who are unable to reside there. This includes accommodation for people displaced by natural disasters, violence or other emergencies which render their permanent home unsafe.
91. We do not propose to make any changes to local authorities’ powers to charge for collection but not for disposal of this waste.

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

⁸ Section 1(2) of the current CWR.

Proposal B 3. To include specific reference to waste from transit sites for Gypsies and Travellers

92. We consider that waste from Gypsy and Traveller caravans and vehicles should be treated in the same way as waste from other domestic properties, and that the current CWR may not ensure that this is the case for waste generated at transit sites where there are limits on the length of time an individual caravan may stay. We are therefore proposing to state explicitly that waste produced on transit sites is to be treated as household waste.

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

Proposal B 4. To classify waste from charity shops and re-use organisations that remove waste from the household waste stream, as household waste, and to exempt such waste from disposal charging.

93. While the CWR do include waste from premises occupied by charities, the status of fund-raising charity shops is unclear. This has resulted in variation in the way different authorities classify waste from these sources and generated more requests to Defra for clarification than almost any other aspect of the CWR. Similarly, some re-use organisations are also registered charities, and so already benefit from free disposal, but others are not.
94. Defra and local authority consultees acknowledge that by collecting or accepting donations from residents that would otherwise end up in the household waste stream these organisations make a significant contribution towards reducing waste, as well as reducing poverty by providing a source of affordable household goods, and, in the case of charity shops, obviously supporting the charitable aims for which they raise funds.
95. Unfortunately people sometimes donate goods that are unsuitable for sale and cannot be repaired, and the organisation must dispose of them. Where the goods originated from a household, Defra believes that they should be treated as 'household waste' and should continue to be exempt from disposal charging.
96. Charity shops or re-use groups will be free to continue to accept donations from other sources but only waste arising from domestic sources would automatically qualify for free waste disposal. It will be for each organisation and its local authority to agree on any record-keeping or other procedures necessary to make this work in practice.

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

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? [Please do not respond to this question unless you represent a WDA, thank you]

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?

C. Structure of the Regulations

97. These proposals are designed to make the Regulations clearer and easier to use, to reduce variation of interpretation and help both local authorities and their customers understand their powers and obligations.

Proposal C 1. To list the classifications of wastes in tables

98. The draft Regulations list wastes according to place of collection; nature of waste or activity producing waste; and household waste for which collection and disposal charges may be made.
99. We consider that the use of tables creates Regulations which are clearer and easier to use. For example, where premises produce waste that may be either household or commercial, depending on the size or use of the premises, the tables list both classifications and the circumstances in which they apply in a single entry.
100. Additionally, exceptions to a general classification, as in the case of septic tank sludge, are set out in a single entry.

Proposal C 2. To combine Schedules 1, 2 3, and 4 into a single Schedule

101. Household, industrial and commercial wastes together make up controlled waste. Controlled waste is the term used in regulations made under Part 2 of the Environmental Protection Act, and because some of these regulations implement the Waste Framework Directive⁹ ('the Directive'), it is important that controlled waste includes all waste which falls within the scope of the Directive. This is currently achieved by reading sections 74(2) and 75(4) of the Act with paragraph 19 of Schedule 3 of the CWR:
- Section 75(2) defines "Directive waste" as all waste within the meaning and scope of the Directive
 - Section 75(4) defines "controlled waste" as household, industrial and commercial waste and
 - Paragraph 19 is a residual category so that if a Directive waste is not otherwise classified as household, industrial or commercial, it is treated as industrial (and therefore falls within the meaning of 'controlled waste')
102. Since 'industrial waste' is a residual category, we do not need to name the premises from which it arises, other than where they are exceptions to another category, so some of the current Schedule 3 is redundant.

⁹ 2008/98/EC

103. Schedule 1 ('Waste to be Treated as Household Waste') and Schedule 2 ('Types of Household Waste for Which a Charge for Collection May be Made') contain different lists of household wastes, with some premises appearing in Schedule 2 that are not listed in Schedule 1. This mismatch makes the CWR confusing and more difficult to use than is necessary.
104. The use of tables, with classifications and exemptions for each type of waste listed in a single entry, allows all these wastes to be listed in a single Schedule. We consider that this makes the Regulations clearer and easier to use.

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.

Proposal C 3. To introduce a hierarchy of classification

105. During informal consultation, some people told us that it could be difficult to classify waste which falls into more than one category, for example where a type of waste listed in the Regulations may arise from a type of premises listed elsewhere in the Regulations. The draft Regulations list wastes in three tables: "classification by place of collection"; "classification by nature of waste or activity producing waste"; and "household waste for which collection and disposal charges may be made". The draft Regulations impose a hierarchy on these classifications so that where wastes appear in more than one table, precedence of classification is firstly paragraph 4(3), followed by paragraph 3(4) and finally paragraph 2(3).

Example: Paragraph 2(3) classifies waste from a penal institution as 'household waste'. Paragraph 4(3)(a) and (b) requires that waste from penal institutions be treated as 'commercial waste' for the purposes of charging.

Paragraph 2(4) gives precedence to paragraph 4(3) and therefore the waste from penal institutions should be treated as commercial waste for the purposes of charging.

Example 2: Paragraph 2(3) classifies waste from the practice of a general medical practitioner as 'commercial waste'. Paragraph 3(3) requires that clinical waste be treated as 'industrial waste'. Paragraph 2(4) gives precedence to paragraph 3(3) and therefore clinical waste from a GP surgery is to be treated as industrial waste.

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.

Summary of Consultation Questions

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.

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?

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

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

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?

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?

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

Question 11. Do you agree that the term 'care home' is equivalent to 'residential home', and that 'nursing home' is equivalent to care home with nursing?

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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

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.