

DERBYSHIRE COUNTY COUNCIL

CABINET MEETING

5 March 2013

Report of the Strategic Director – Environmental Services

**THE CONTROLLED WASTE (ENGLAND AND WALES)
REGULATIONS 2012 (TECHNOLOGY AND RECYCLING)**

(1) **Purpose of the Report** To inform Cabinet of changes to the powers that local authorities have in respect of making charges for waste collection and disposal as defined in the new Controlled Waste Regulations (England and Wales) 2012 (CWR 12), which have replaced the Controlled Waste Regulations 1992 (CWR 92), and to consider the implications of the new Regulations for the County Council in its role as Waste Disposal Authority (WDA).

(2) **Information and Analysis** The term “household waste” means something different in legislation to its general meaning to the public and when referred to informally by officers. In legislation, the term “household waste” includes waste from domestic residences but also waste from a range of non-domestic premises, such as schools, nursing homes and hospitals. Where the term “household waste” is used in this report, it is referring to the legal definition. In cases where a distinction is being made between different types of household waste (e.g. from non-domestic premises), the report makes that distinction. The new Regulations do not affect the Council’s duties or powers in relation to domestic households.

The interpretation of CWR 92 by local authorities has been problematic because the terminology was unclear and, as a consequence, charging mechanisms were difficult to introduce. Schedule 2 of CWR 92 defined the types of premises which were classified as household waste producers which local authorities could charge for waste collection but not waste disposal. The Department for Environment, Food and Rural Affairs (DEFRA) attempted to resolve this confusion by issuing an explanatory letter in October 2007 but admits that this did not succeed in achieving the clarity desired.

Under the CWR 92, District and Borough Councils acting as Waste Collection Authorities (WCAs) 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 County Council, as WDA, has a duty to dispose of all household waste (including non-domestic) collected by the WCAs and to meet the cost of disposal.

It should be noted that non-domestic properties are able to choose a WCA or private sector contractor to collect their waste and recycling. They are also able to explore the market to secure the most competitive price. Although some properties were exempt from disposal charges under the CWR 92, many still choose to use a private sector contractor, rather than a WCA who charge for collection only. This is due to a number of reasons, a WCA may not have been able to deliver the level of service required, for example, size of bin or frequency of collection, and often premises did not know the services were available from the WCAs. Those premises using a private sector contractor pay both collection and disposal costs.

Between 2008 and 2010, Government carried out a full review of the CWR 92 since the cost of waste disposal has increased significantly since the Regulations were introduced and continues to do so. The legislation was introduced when waste collection was the main consideration and disposal costs were nominal. The cost of disposing of certain waste streams defined in the CWR 92 was borne by the WDA rather than by the particular premises. Accordingly, the "Polluter Pays" principle was not being appropriately applied.

As a result the market for waste collection has become increasingly distorted, and large numbers of the "Schedule 2" premises have increasingly been moving from private-sector contracts to Local Authority waste services in order to take advantage of taxpayer-funded waste disposal, creating a shortfall in Local Authority funding that has been met by the taxpayer. The review looked to encourage more sustainable waste management by removing the barriers that were insulating certain organisations from the full cost of handling their waste.

The review resulted in revised Controlled Waste Regulations (England and Wales) 2012 (CWR 12) being laid before parliament and these came into effect on 6 April 2012¹. These Regulations give WDAs the power to choose whether to charge for disposal of waste from some non-domestic properties. They have also re-classified some household waste as commercial waste for which disposal charges could be applied.

The legislation change was required in order to allow local authorities to fully recover the costs of their non-domestic waste service from users, and remove the burden from taxpayers.

¹ Government made an error in the CWR 2012 and an amendment came into force on 9 October 2012.

CWR 12 continues to define waste using the categories household waste, commercial waste and industrial waste, but has separate means of classification:

- by the place of production; and
- by the nature of the waste or the activity producing the waste.

Where there is a conflict between how waste is classified by its place of production and the nature of the waste or the activity producing the waste, the regulations prescribe that the latter will take precedence. The information in the sections below takes account of this hierarchy.

The legislation defines types of household waste and whether charges for collection and disposal may be made. It introduces disposal charges to some non-domestic household waste producers. Also, some non-domestic premises formerly classified as producers of household waste are now classified as producers of commercial waste.

The following sections summarise the changes brought about by the new regulations.

Non-Domestic Properties

The non-domestic properties for which charges for disposal can now be applied under the new Regulations are:

- Universities, schools and further education establishments.
- Residential homes, care homes and care homes with nursing.
- Hospitals.
- Nursing homes.
- Prison or penal institutions.
- Waste from premises occupied by:
 - (a) a community interest company (being a company which is registered as such with the registrar of companies), or
 - (b) a charity or other not for profit body, which collects goods for re-use or waste to prepare for re-use from domestic property.

Waste from premises forming part of a university, school or other educational establishment - The power to charge for waste disposal from publicly funded schools has been introduced in the new Regulations, although there is a significant exception to this power.

Disposal charges can only be applied if the educational establishment paid disposal charges before the 2012 Regulations came into effect (6 April 2012). Since existing educational establishment customers did not pay disposal charges before (only collection charges applied), disposal charges cannot be introduced to them. The exception only applies to publicly funded schools.

Non-publicly funded schools, both current and new customers could be subject to disposal charges. Any new educational establishment customers, can also be charged for disposal.

The Government will review this position in the next spending review in 2015, so these customers will be exempt from disposal charges until that point at least. Waste Management officers will need to undertake further work with the Strategic Director – Children and Younger Adults to anticipate and assess the financial impact on local authority funded schools from 2015 when charges for disposal may apply.

Residential homes - CWR 12 introduces the power to charge residential homes for their waste disposal, including for any clinical and offensive waste collected from these premises. However, local authorities must consider contributions to collection and disposal already made by residents.

Finance officers have reviewed the legislation surrounding the payment of council tax for residents of Derbyshire County Council owned residential and nursing homes, and it would appear that no disposal charge could be applied to any these premises under the new Regulations since the homes pay council tax.

Nursing homes and hospitals - As with residential homes, nursing homes and hospitals are subject to disposal charges under the new Regulations in addition to the collection charges that already apply. However, no disposal charge can be applied if the waste is from council tax paying residents. Clinical waste and offensive waste from nursing homes fall under the default classification of industrial waste for these waste types. Charges for such waste are already applied.

As detailed above, it would appear that no disposal charge could be applied to Derbyshire County Council owned residential homes under the new Regulations since the homes pay council tax. However, disposal charges could potentially be applied to privately operated care homes which receive waste services from local WCAs and pay no council tax.

Penal institutions - Penal institutions are subject to disposal charges under the new Regulations, in addition to the collection charges already applicable under the previous Regulations.

Charities involved in re-use - Charities involved in re-use of waste (e.g. charity shops) can now be charged for waste disposal, as well as collection, where the waste has come from non-domestic sources. The onus is on local authorities to supply guidance to charities to help them to implement a system to demonstrate where the waste originates from, to allow the Council then to determine whether a charge for disposal should be made.

There is no data on how much of the material taken by re-use operations from charities comes from non-domestic sources (although one might expect it to be low), so it is difficult to estimate the cost of designing and implementing such a system and whether the cost would outweigh the income received through disposal charges. Further work is required to investigate the feasibility and cost effectiveness of introducing disposal charges to charities disposing of non-domestic waste.

Other charities - All other charities not involved in re-use or selling goods donated from domestic properties (headquarters and offices) are classed as producers of commercial waste in the new regulations for which disposal charges can be applied.

Commercial Waste

The Regulations have also classified the following waste types as commercial waste rather than household waste for which charges for collection and disposal can be applied:

- Premises occupied by a charity used for charitable purposes – see above.
- Camp and caravan sites (subject to an exemption).
- Royal Palace.
- Club, society or association.
- Self-catering accommodation (subject to an exemption).
- Medical Practitioners.

The Regulations give local authorities flexibility to waive fees for commercial waste if they feel it is justified.

Domestic premises (including caravans) used for self-catering accommodation and commercial camp sites - These premises are now defined as producers of commercial waste for which charges for collection and disposal can be applied. These premises were formerly classified as household waste producers for which a charge for waste collection could only be applied.

Royal Palace – These premises are now defined as producers of commercial waste for which a charge for collection and disposal can be made.

Premises occupied by a club, society or any association of persons in which activities are conducted for the benefit of members - These premises were classed as producers of commercial waste under CWR 92 and this has not changed in the new Regulations.

Bed and Breakfasts (B&Bs) and other composite hereditaments (ie Properties used for both domestic and non-domestic purposes) - These

premises continue to be defined as commercial waste producers under the new Regulations for waste that is generated from commercial operations at the premises.

The Local Government Ombudsman advises that composite hereditaments should be provided with free collections for the domestic element of the property but that charges can be applied for waste from the commercial part of the premises. It also recommends that councils have a specific policy on this issue, which has been lacking to date. In practice, it would be difficult for officers to determine precisely what is and is not commercial waste at the premises, so the issue is only likely to be raised when B&B owners, for example, contact the WCAs to request a larger bin for their domestic waste.

Medical Practitioners – These premises were previously not defined in CWR 92 but have now been defined as commercial waste producers under the new regulations for which a charge for collection and disposal can be made.

Points of Clarification

The new Regulations continue to define premises used wholly or mainly for public meetings as producers of household waste for which a collection charge can be applied but no disposal charge. However, officers are aware that there is a commercial element of waste generated by halls that are made available for private hire or for gatherings that are not classed as public meetings. Further work is required to consider a practical approach to determining the threshold at which waste from these premises is deemed to be commercial waste, based on bin size and collection frequency.

Under the previous Regulations, gypsy and traveller sites were not defined. Under the new Regulations, these sites must be treated in the same way as any other domestic property, with free collections of household waste in the designated containers for residual waste and recycling.

As a result of the review CWR 12 has included an exemption for small businesses namely those that meet the following two conditions:

- (a) are entitled to Small Business Rate Relief; and
- (b) were eligible for free waste disposal under CWR 92 (i.e. premises covered by Schedule 2, including those premise types which are classed as commercial waste producers under CWR 12).

DEFRA has recently amended the new legislation to clarify that these commercial waste producers are included in the scope of the exemption, which the original instrument did not allow.

This exemption is most likely to be for self-catering accommodation, camp/caravan sites and pre-school childcare organisations. Further work by

officers and WCAs will be required to develop a means of identifying these customers, although businesses which fall into this category are likely to volunteer the information to help the right level of charges to be applied.

A detailed summary of all the changes arising from the new Regulations is provided in Appendix 1.

Impact of New Regulations

The County Council has begun working with WCA partners to understand the impact the CWR 12 will have both on the District and Borough Councils and their customers. There are sensitive issues to take into account when considering if the County Council should use this power to charge, these include:

- The WCAs could no longer be at a financial advantage against commercial competitors and they could lose customers.
- Certain vulnerable organisations could be affected, particularly residential/care/nursing homes and community based organisations.
- More waste could be collected if the County Council decided not to impose a charge as organisations seek to benefit from reduced charges and the County Council would be liable for all disposal costs.
- Organisations would face an increased disposal cost which could affect services to their community.
- The County Council could be seen to be unfairly undercutting private sector collections if the power to charge disposal was not appropriately applied.
- At a time of limited financial resources, it is more important than ever for the taxpayer to no longer subsidise the waste disposal costs of private businesses.

It is difficult to determine the impact to organisations because each WCA has a different methodology to set their charges. Based on an impact assessment, produced by DEFRA as part of their formal consultation, disposal now accounts for 50% of the total waste management costs. The WCAs would need to squeeze services to include the disposal charge so that they remain competitive in the marketplace, but inevitably, the cost of their waste collection service would increase where disposal charges are levied.

The potential benefits of adopting the power to charge are summarised below:

- **To remove public funding of private business costs.** Allowing the County Council to recover the costs of waste disposal from non-domestic users will benefit the taxpayer. In addition, both public and private sector Schedule 2 premises will be incentivised to reduce their waste disposal costs.

- **To remove the market distortion.** By removing the public funding of Schedule 2 premises' disposal costs, this would create a level-playing field for private sector waste management businesses. This will also increase the ability of Schedule 2 organisations to choose the most appropriate waste management services for their circumstances.
- **To promote waste reduction and recycling.** The new Regulations should effectively contribute towards Government policy aims of reducing waste, increasing recycling rates and providing non-domestic waste services based on the 'polluter pays' principle.

This report provides a summary of the changes to the powers that local authorities have in respect of making charges for waste collection and disposal as defined in the Controlled Waste Regulations (England and Wales) 2012. Whilst it has briefly considered the implications of the new Regulations, further work is required, specifically more detailed consultation with the WCAs and other key stakeholders, to enable the development of a charging policy that can be applied across Derbyshire.

(3) **Financial Considerations** Further work is required to understand the financial implications of the new Regulations. The WCAs have requested that sufficient advance notice of any increase in charges is given to enable changes to re-charges to be made. Where changes affect the voluntary and community sector, the Council must give at least three months' notice of any increase in charges in line with Best Value Statutory Guidance.

In preparing this report the relevance of the following factors has been considered: financial, legal, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(4) **Key Decision** No.

(5) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(6) **Background Papers** None. Officer contact details – Claire Brailsford, extension 39775.

(7) **OFFICER'S RECOMMENDATIONS** That Cabinet:

7.1 Notes the changes to the powers that local authorities have in respect of making charges for waste collection and disposal as defined in the Controlled Waste Regulations (England and Wales) 2012.

- 7.2 Notes the limited impact on County Council funded establishments initially but endorse further work being undertaken to assess and anticipate the impact on local authority funded schools from 2015 when charges for disposal may apply.
- 7.3 Authorises the development of a proposed policy for Derbyshire for the implementation of the Controlled Waste Regulations (England and Wales) 2012 including appropriate consultation.
- 7.4 Authorises the Strategic Director – Environmental Services to work with the Waste Collection Authorities to understand and interpret the financial implications of the proposed policy.

Ian Stephenson
Strategic Director – Environmental Services

Summary of Changes to the Controlled Waste Regulations

	Description	Current Regulations		CWR 2012		
		Classification	Collection Charge only	Classification	Change	Exceptions
	NO CHANGE					
1.	Domestic caravan	Household waste	No	Household waste	No change. No charges.	
2.	Places of worship	Household waste	No	Household waste	No change.	
3.	Moored vessel for living accommodation	Household waste	No	Household waste	No change. If used as business then to be treated as commercial waste.	
4.	Residential hostel ² provides accommodation only to persons with no other permanent address.	Household waste	Yes	Household waste	No change.	
5.	Garden Waste	Household waste	Yes	Household	No change.	Charge if non-domestic premises or penal institution waste
6.	Clinical Waste from domestic property	Household waste	Yes	Household	No change.	
7.	Waste arising from works of construction or demolition, including waste arising from preparatory work	Industrial Waste	Yes	Industrial Waste	No change.	
8.	Asbestos	Household waste	Yes	Household waste	No charge if from small-scale DIY.	
9.	Hall used for public meetings	Household waste	Yes	Household	No change.	Government withdrew proposals to make this commercial waste and chargeable.

² Provision of accommodation only to persons with no other permanent address or who are unable to live at their permanent address.

	Description	Current Regulations		CWR 2012		
		Classification	Collection Charge only	Classification	Change	Exceptions
10.	Club, society or association	Commercial Waste	No	Commercial	Chargeable for collection and disposal.	
CHANGE – POWER TO CHARGE FOR DISPOSAL						
11.	University, schools and further education establishment	Household waste	Yes	Household waste	No charge for disposal only if public funding and currently receiving LA collection.	Non-publically funded schools and any publically funded schools and further education establishments reverting back to WCA collection services.
12.	Hospital	Household waste	Yes	Household waste	Power to charge for disposal.	No disposal charge if from council tax paying residents. Except waste from residential hostel.
13.	Nursing home	Household waste	Yes	Household waste	Power to charge for disposal.	No disposal charge if from council tax paying residents. Except waste from residential hostel.
14.	Residential home, care home and care home with nursing.	Household waste	Yes	Household waste	Power to charge for disposal.	Self-contained domestic accommodation eg sheltered housing is not a residential home. LAs need to consider contributions made to collection and disposal already made by residents.

		Current Regulations		CWR 2012		
	Description	Classification	Collection Charge only	Classification	Change	Exceptions
15.	Prison or penal institution	Household waste	Yes	Household waste	Power to charge for disposal	
16.	Waste from premises occupied by — (a) a community interest company (being a company which is registered as such with the registrar of companies), or (b) a charity or other not for profit body, which collects goods for re-use or waste to prepare for re-use from domestic property	Household Waste	Yes	Household waste	Power to charge for disposal for waste originating from non-domestic premises.	Waste originating from a domestic premise is non-chargeable disposal.
CHANGE – NOW CLASSIFIED AS COMMERCIAL WASTE RATHER THAN HOUSEHOLD WASTE						
17.	Premises occupied by a charity used for charitable purposes	Household waste	Yes	Commercial	Chargeable for collection and disposal.	
18.	Camp and caravan site	Household waste	Yes	Commercial	Chargeable for collection and disposal if non-domestic.	Provision of exemption on liability to pay disposal for small business currently eligible for free waste disposal and small business rate relief. **
19.	Royal Palace	Household waste	Yes	Commercial	Chargeable for collection and disposal.	

	Description	Current Regulations		CWR 2012		
		Classification	Collection Charge only	Classification	Change	Exceptions
	CHANGE – NOT ORIGINALLY DEFINED IN 1992 REGULATIONS					
20.	Charity Shops	<i>Not defined in Regulations</i>		Household waste	Disposal charge only for waste from non-domestic property.	Subject to exemption in row no. 15
21.	Gypsies and travellers caravan site	<i>Not defined in Regulations</i>		Household waste	No charge if domestic waste.	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.
22.	Self-Catering accommodation	<i>Not defined in Regulations</i>		Commercial	Chargeable for collection and disposal.	Provision of exemption on liability to pay disposal for small business currently eligible for free waste disposal and eligible small business rate relief. **
23.	Medical Practitioners	<i>Not defined in Regulations</i>		Commercial	Chargeable for collection and disposal.	