

**Forest Heath District Council
St Edmundsbury Borough Council**

**WEST SUFFOLK WASTE
AND STREET SCENE
SERVICES JOINT
COMMITTEE**

14 JANUARY 2011

JWC11/039

**Report of the Strategic Director (Services) (FHDC)
and the Corporate Director (Economy & Environment)
(SEBC)**

**RESPONSE TO THE GOVERNMENT'S CONSULTATION ON THE CONTROLLED
WASTE REGULATIONS 1992 AND THE IMPLICATIONS FOR FHDC AND SEBC**

Synopsis:

**The purpose of this report is to update members on the consultation of the
Controlled Waste Regulations (CWR) and the impact on FHDC and SEBC.**

Background

- 1 Under the Environmental Protection Act 1990 (EPA), Forest Heath District Council (FHDC) and St Edmundsbury Borough Council (FHDC) are Waste Collection Authorities (WCA) and are required to make arrangements for the collection of household waste arising in their area.
- 2 The Controlled Waste Regulations 1992, made under the EPA, defines the categories of household waste for which the collection duty applies and also details household waste for which a collection charge can be made (known as Schedule 2 waste), such as heavy or bulky items, garden waste, asbestos or dead domestic pets. Also included is waste from the following types of premises:
 - (a) Hospitals and nursing homes
 - (b) Residential hostels
 - (c) Residential homes
 - (d) Schools, universities and other educational facilities
 - (e) Caravan sites and campsites
 - (f) Self catering holiday accommodation
 - (g) Prisons and penal institutions
 - (h) Public halls
 - (i) Royal palaces
 - (j) Premises occupied by charities and used for charitable purposes.
- 3 It should be noted that non domestic premises (as outlined above) are not required to use the service of their local council and they can approach private waste collection companies to deliver the service. However, private companies will charge for both the collection and the disposal of the waste.

Current service provided

- 4 At present, both councils deliver their collection duty through the provision of a kerbside collection of residual waste, recyclables and green kitchen and garden waste. In addition, demand led collections are provided for bulk refuse, clinical waste and hazardous waste.
- 5 It is the duty of Suffolk County Council (SCC), as the Waste Disposal Authority, to arrange for the disposal of household waste. However, unlike collection, there are no provisions which allow the disposal costs to be charged for Schedule 2 waste.
- 6 At present, FHDC and SEBC charge certain Schedule 2 institutions such as schools etc for the collection of the waste, but SCC are not able to charge for the disposal of the waste

Review and consultation on the current legislation

- 7 The purpose of the Government's review of the CWR is to:
 - a. Identify the flaws and weaknesses in the current CWR;
 - b. Gain an understanding of the impacts on local authorities if they remain unaltered;
 - c. Consider how they can be brought into line with modern waste legislation;
 - d. Further the wider sustainability aspirations of Defra and Welsh Assembly Government;
 - e. Improve the transparency and accountability of public funding; and
 - f. Encourage greater involvement of local people in local decision making in England.
- 8 The key issues with the current regulations are:
 - a. Confusing structure and outdated terminology**

There is considerable confusion around the correct interpretation of the CWR and whether certain premises are covered, notably when the CWR uses terms to describe premises that are no longer in use elsewhere.
 - b. Failure to implement the Polluter Pays Principle**

Under the current CWR, commercial and industrial waste producers 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 council tax.

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.
 - c. Market distortion**

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 per tonne, will rise to £80 per tonne by 2014.

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. 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.

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.

d. Constraining choice of Schedule 2 customers

The current CWR can have the unintended consequence of dissuading some Schedule 2 institutions from being more responsible in the way they handle their waste. 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.

e. Public funds subsidising private businesses

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.

- 9 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 the collection of waste arising from domestic properties and this aspect has not been reviewed.
- 10 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.
- 11 In view of the above, the Government intends 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; and
 - Retaining local authorities' duty to collect, if requested, waste from institutions currently listed in Schedule 2, in the interests of public health.

Response to the consultation

- 12 The proposed response to the consultation from FHDC and SEBC is attached in Appendix 1. The response has been developed in consideration of the prioritised options of the national waste strategy and implementation of the polluter pays principle.
- 13 Subject to the consultation outcome, the power to charge for waste disposal will commence on 1 April 2012.

Finance/Budget/Resource Implications

- 14 The future budget implications are unknown until the consultation is complete. However, there are a couple of key points to note:
- FHDC and SEBC will not be financially disadvantaged directly by a change to the power to charge for the disposal of the Schedule 2 waste. The costs of disposal will be passed on to the waste producer.
 - FHDC and SEBC collect waste from certain institutions such as schools, where at present the school is charged for the collection of their waste but is not charged for the disposal of their waste; the disposal cost is met by SCC. As a result, the council is likely to be successful in any bid to carry out this work, unlike private companies who will charge for collection and disposal. As a result of the intended change to the regulations, when FHDC and SEBC compete for this work, there is a risk that we will be unsuccessful. This will reduce income to the council.

Environmental Impact and Sustainability

- 15 Defra is 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.
- 16 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.
- 17 The consultation supports key policies to reduce the environmental impact of waste services:
- The Waste Hierarchy and the promotion of sustainable waste management; and
 - The Polluter Pays Principle, in which those who produce the waste must pay the full cost of managing the waste.

Policy Compliance/Power

- 18 Subject to the Regulations being approved, there is an impact on the councils' policies in terms of charging for waste collection services.
- 19 The consultation response supports the vision and actions of the Joint Municipal Waste Management Strategy for Suffolk and the key principals set out the in Inter Authority Agreement for Suffolk's waste management services.
- 20 Subject to the outcome of the consultation, a policy decision on the approach to be taken for charitable organisations will need to be agreed.

Performance Management Implications

- 21 Despite the review of the National Indicators, it is expected that waste collected and disposed of will continue to be reported nationally using Wastedataflow.
- 22 The majority of the previous waste related national indicators focused specifically on the management of household waste. It is assumed that we will not be required to include data from household waste institutions that do not use council waste collection services sources, when calculating waste recovery performance. Moreover, collecting less household waste, especially from institutions that rely on disposal rather than recycling, will have a positive effect on waste recycling performance.

Legal Implications

- 23 The change to the CWR will be accommodated by FHDC and SEBC in the waste collection services provided.

Human Rights Act and Diversity Implications

- 24 There are no human rights and diversity implications from the change to the CWR.

Crosscutting Implications

- 25 There are no crosscutting implications associated with this consultation

Risk Assessment

- 26 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.
- 27 A key risk is the loss of income associated with Schedule 2 customers seeking services from private waste collection companies.

Council Priorities

- 28 The effective management of waste supports the following council priorities:

Forest Heath:

- Community safety; and
- Street scene and environment.

St Edmundsbury:

- Raise standards and corporate efficiency;
- Improve the safety and well being of the community; and
- Secure a sustainable and attractive environment.

Recommendation:

29. It is recommended that Members note the response to the consultation on the Controlled Waste Regulations.

Document Attached

Appendix 1: Proposed response to the Controlled Waste Regulations.

Background Papers

None

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Strategic Director (Services) / Corporate Director (Economy and Environment)
6 January 2011

CONTACT OFFICER

Mark Christie, Service Manager (Environment and Waste)

A Response to the review of Schedule 2 of the Controlled Waste Regulations by Forest Heath District Council and St Edmundsbury Borough Council

Consultation Document:	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 http://www.defra.gov.uk/corporate/consult/controlled-waste-regs/index.htm
Response Submission: <i>To:</i>	Lucy Toman Controlled Waste Regulations Project Team, Defra Waste Programme, Area 6C, Ergon House, Horseferry Road,, London, SW1P 2AL Email: CWRConsultation@defra.gsi.gov.uk
Deadline:	14 January 2011
Response Version:	Version 1
Response Author(s):	Mark Christie, Service Manager, Mike Culver, Waste Projects Officer, Lee Williams, Waste Awareness Officer
Approved by:	Cllr Nigel Roman, Chair of Community Services Committee (FHDC) Cllr Tony Simmons, Member Champion (Environment) (FHDC) Cllr Peter Stevens, Portfolio Holder for Environment (SEBC) Cllr David Ray, Portfolio Holder for Performance and Organisational Development (SEBC)
Approval Date:	Xx January 2011

	Question	Proposed Response
	<p>Option 1:</p> <p>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.</p>	<p>Yes.</p> <p>Previous Defra guidance issued did not clarify the position regarding the CWR.</p>
	<p>Option 2:</p>	
1	Do you agree that waste from tents should be classified as commercial waste?	Yes, as this will be used for holiday accommodation.
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?	Yes
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?	Yes
4	Do you agree that local authorities should be entitled to charge charities for disposal of the waste they produce?	Yes. This is consistent with the polluter pays principle, although there would be a concern with regard to residents “dumping” waste at charity shops.
5	Do you agree that waste from premises used for public meetings should be classified as commercial waste?	Yes, particularly as they are normally multi use sites and available for private functions.
6	Do you agree that waste from Royal Palaces should be classified as commercial waste?	Yes
7	Do you agree with the reclassification of non-clinical waste from	Yes

	GP surgeries?	
8	Do you agree that local authorities should have the power to charge educational institutions for disposal of their waste?	<p>Yes</p> <p>The regulations need to clarify the position in terms of the council's duty to report household waste and whether there is an intention that this reporting extends to household waste that they no longer collect.</p> <p>It should also be noted that FHDC and SEBC do currently offer variable pricing strategies to encourage more sustainable waste treatment methods.</p>
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?	Yes
10	Do you agree that local authorities should have the power to charge hospitals and nursing homes for disposal of their waste?	Yes
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?	Yes
12	Do you agree that local authorities should have the power to charge residential homes for disposal of their waste?	Yes
13	Do you agree that local authorities should have the power to charge penal institutions for disposal of their waste?	Yes
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?	<p>Yes</p> <p>This supports the localism agenda and local sustainability. The regulations should extend the power to charge but not make it a duty.</p>

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?	No However, whilst there is an intention by the government to remove any unintentional public subsidy that makes private sector competition difficult, it should also be recognised that there is also a tendency for the private sector to “cherry pick” the more efficient waste collections, leaving the more difficult or least “profitable” collections to councils, particularly as councils have the duty to collect. Furthermore, the regulations must guard against the private sector also “cherry picking” the recycling waste streams, leaving the more expensive residual waste streams for council’s to collect.
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?	Yes
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?	Note This needs further clarification before responding.
18	Is the new definition of a ‘residential hostel’ clearer? Does it exclude any types of hostel which you consider should be included?	Yes No
19	Do the new regulations make it clear that waste arising from domestic caravans and vehicles at a transit site is household waste?	Yes, although a specific definition of and reference to “transit sites” would be useful.
20	Do you agree that charity shops and re-use organisations should benefit from free waste disposal?	These organisations provide a valuable service to the local community, including wider social and environmental benefits. The decision regarding disposal should be applied at a local level.

		Moreover, it is important for the regulations to be clear about the definition of “charity” in the wider application of the regulations.
21	Do you consider that the restriction of free waste disposal to waste originating from a domestic property is practical?	This appears to be the most sensible approach, but the practicality will be influenced by the same problems experienced at present with regards to waste from non domestic origins being disposed of in the domestic waste bin.
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?	n/a
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?	It is important that commercial waste is not managed as household waste as this will have implications for illegal waste transfer and also it will not support the polluter pays principle. The safeguards must be the responsibility of the charity to ensure that waste is transferred correctly.
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	To be confirmed
25	Is the proposed hierarchy clear and easy to follow? Please highlight any conflicts between the tables, or perverse consequences of the proposed hierarchy.	To be confirmed