

Appendix 1 Letter from DEFRA to Local Authorities on CWR schedule ii

Dear Sir or Madam

Classification and reporting of waste

1. I am writing to remind all authorities with waste collection and/or disposal duties (hereafter referred to as waste authorities) of existing legislation and guidance in relation to certain aspects of classification and reporting waste. Waste authorities have statutory obligations to report waste data. This letter provides important information that waste authorities should take note of when reporting waste data. This is not new guidance and does not replace existing guidance.
2. In recent months Defra has received a high volume of enquiries seeking further clarification on household and commercial waste. In addition a variety of sources, including the Audit Commission (AC) and the Greater London Authority, have brought to Defra's attention a number of waste classification and data reporting issues.
3. An ongoing AC investigation of practice has revealed that even within a single county area there is a wide variation in interpretation and understanding of the legislation.
4. There is variation in how some regulations are currently being interpreted by waste authorities. In the light of this I am writing to all waste authorities in England to ensure a consistent approach is being used throughout the country.
5. I am writing to clarify Defra's interpretation of a number of issues related to:
 - section 45 of the Environmental Protection Act 1990 (EPA)
 - section 51 of the EPA
 - schedules 1 and 2 of the Controlled Waste Regulations 1992 (CWR) and
 - the Household Waste Recycling Act 2003 (HWRA)

Section 45 of the EPA

Making Arrangements for Commercial Waste Collection

6. Defra has carried out an informal survey and found that a number of waste authorities have posted on their websites a statement to the effect that the authority does not provide a waste collection service for commercial waste (trade waste) and in some cases directs enquirers to Yellow Pages. Defra believes this does not fulfil the authority's duty under section 45(1)(b) of the EPA.

7. Defra published updated guidance on municipal waste in June 2006.¹ Regarding commercial waste, the guidance states that waste collection authorities (WCA) have a duty under section 45(1)(b) of the EPA to arrange for the collection of commercial waste where requested to do so. Section 75(7) of the EPA defines commercial waste as “waste from premises used wholly or mainly for the purposes of trade or business or the purposes of sport, recreation or entertainment”. This definition excludes household waste, industrial waste, agricultural waste and waste from any mine or quarry.
8. If a WCA declines to collect commercial waste when requested to do so, and does not arrange for its collection by a private sector contractor, it is likely to be acting in breach of its duty under section 45(1)(b).
9. Any WCA thinking of operating a selective service for commercial waste would need to satisfy itself that it was not breaching its duties under the EPA. If a request is made of the authority to collect commercial waste, the authority must have in place arrangements to meet the request. Telling enquirers that the authority does not offer a commercial waste service or, for example, to look in Yellow Pages or providing a list of waste contractors in the area is not sufficient to comply.

Reporting arisings of commercial waste

10. Commercial waste which is collected by a WCA itself will be waste which comes into the possession or under the control of a waste authority, and therefore in Defra’s view qualifies as municipal waste² and falls within the Landfill Allowances Trading Scheme (LATS). This waste must be reported to the Environment Agency (the Agency) by the waste disposal authority (WDA) that holds the allowances.
11. Furthermore, because the duty in section 45(1)(b) of the EPA is to arrange for the collection of commercial waste, it also follows that waste will come into the possession or under the control of a WCA if it is collected by a private sector contractor on behalf of the WCA.
12. This is because:
 - a. the waste will be collected as a means of meeting the WCA’s obligations under section 45(1)(b) of the EPA; and
 - b. in two-tier areas the WCA will need to ensure that all the waste is delivered as directed by the WDA, or recycled in accordance

¹ www.defra.gov.uk/environment/waste/localauth/lats/pdf/lats-municipalwasteguidance.pdf

² A consultation on the definition of municipal waste as set out in Defra’s guidance on LATS closed on 21st September 2007. Some local authorities are concerned by the apparent difference between the practical definition used in Defra’s guidance and the legal definition set down in the Waste and Emissions Trading Act 2003. The consultation puts forward proposals to amend the definition of municipal waste to resolve the apparent tension with Defra’s interpretation.

with section 48(2) of the EPA. In single-tier areas the waste will need to be managed in accordance with section 51 of the EPA.

Reporting commercial waste where the authority has “made arrangements” for its collection

13. Any waste collected by a third party on behalf of the waste authority, in response to a request according to section 45(1)(b) of the EPA, is municipal waste. It should be reported as collected municipal waste for the purposes of LATS (see paragraphs 3.7 and 3.8 of the June 2006 guidance on municipal waste).

14. The Environment Agency (the Agency) has recently completed detailed audits of waste data reporting by 24 WDAs. These have found generic issues associated with interpretation of guidance specific to LATS. The Agency plans to publish frequently asked questions to help local authorities interpret the waste reporting requirements soon.

Classification of waste from Army barracks³

15. The MoD reports some waste authorities are either charging for the collection of or refusing to collect waste from army properties known as Single Living Accommodation (SLA). This is in contrast to the treatment of waste from army properties known as married quarters, where, the evidence suggests, waste authorities are collecting free of charge in accordance with the EPA. Under section 45 of the EPA the WCA has a duty to collect household waste in its area. Section 75(5) of the EPA clarifies the meaning of household waste. The relevant subsection in the case of SLA is 75(5)(a) which states that household waste means waste from a *domestic property, that is to say, a building or self-contained part of a building which is used wholly for the purposes of living accommodation*. This clearly includes SLA and therefore under the EPA authorities cannot charge for the collection of this waste or refuse to collect it.

Section 51 of the EPA

Acceptance of waste at Civic Amenity sites

16. There is no legal requirement on a waste authority to accept waste free of charge at sites provided under section 51(1)(b) of the EPA⁴ from any source other than residents in the area. However, the authority running the site has the right to accept waste from other sources if it so chooses and it can make a charge for deposit⁵ of such waste.

³ The position set out here applies to all military bases not just Army barracks.

⁴ These places are generally known as Civic Amenity (CA) sites or Household Waste Recovery Centres (HWRC).

⁵ In the case of household waste brought to the site by an organisation such a charity shop for example, this is not a charge for disposal. Rather it should be seen as a charge for deposit of the waste at a location from where it will be responsibly treated and so the depositor will not be charged with fly-tipping.

17. Defra has been asked to clarify its interpretation of the term 'resident in the area' specifically whether or not this can apply to organisations. Defra's view is that the term applies to people only and does not apply to organisations.
18. Defra has been approached by the Furniture Re-use Network (FRN) which has pointed out that its members are generally subject to charges at CA sites in spite of the fact that they are frequently dealing with household waste that arises from residents in the area and reducing the authority's waste arisings in the process. Any such waste which they deposit at CA sites is waste which would otherwise have been domestic household waste and thus not legally subject to any charge.
19. The FRN believes that it has developed a robust record-keeping system that demonstrates the source of the material its members collect and the diversion resulting from their reuse and recycling activities. It is thus possible, in the FRN's view, to demonstrate which of the waste taken to CA sites by its members would otherwise have been domestic household waste.
20. Defra does not intend to instruct local authorities to accept such household waste at their CA sites free of charge for FRN members. However, we know that some authorities have recognised the advantage to their own waste objectives of encouraging reuse groups by waiving charges where waste can be shown to have arisen in local households.
21. There are other voluntary groups who have also found their activities limited by some waste authorities' insistence that they cannot deposit waste at the local CA site without paying a charge. An example is Age Concern⁶ which through its 'buddy system' tries to provide a free bulky waste delivery (to the CA site) for the elderly in the area who do not have the means to transport the waste to the CA site themselves. Where a local authority does not offer free bulky waste collections for the elderly or infirm, the work of voluntary groups can cost-effectively supplement the services offered by the authority. Waste authorities will wish to consider the scope for showing flexibility in the way they handle such issues. Provided the third party group has an accurate record-keeping system, the authority can count wastes treated or diverted through these groups towards its own waste performance indicators and LATS landfill diversions.

Schedules 1 and 2 of the CWR

22. Defra is aware that inconsistency of interpretation exists on certain issues related to the schedules.

⁶ The organisation would of course have to apply to the EA for a waste carrier licence but as a charity it would be exempt from the fee.

Schedule 1 of the CWR

23. Schedule 1 of the CWR⁷ sets out those sources of waste to be considered as household waste.

Waste from places of religious worship

24. Defra is aware of confusion in some waste authorities over the status of waste from premises used as places of religious worship.

25. Paragraph 1 of Schedule 1 of the CWR classifies as household waste from a hereditament or premises exempt from local non-domestic rating by virtue of, in England and Wales, paragraph 11 of Schedule 5 to the Local Government Finance Act 1988. In practice, this means waste from places of religious worship. Authorities with waste collection duties must collect this waste and may not charge for its collection or disposal.

26. Under paragraph 11(1)(b) of Schedule 5 of the Local Government Finance Act 1988, the provision in paragraph 25 above also applies to buildings used in connection with the conduct of public religious worship such as an office or church hall. However, if the church, mosque, synagogue etc hires out such buildings to other groups not connected with the conduct of religious worship this would be a commercial activity and any waste arising from such use would be commercial waste for which a charge for both collection and disposal can be made.

27. Paragraph 15 of Schedule 2 of the CWR⁸ classifies waste from premises occupied by a charity as household waste for which an authority may charge for collection (but not disposal).

28. However, Defra is aware that some authorities are charging for collection of waste from charities located in places of worship. If the activities of the charity are in connection with the conduct of public religious worship the charity would be entitled to free waste collection as well as free disposal.

Schedule 2 of the CWR

29. Schedule 2 lists those types of household waste for which an authority can currently⁹ make a charge for collection.

Educational establishments and hospitals

⁷ www.opsi.gov.uk/si/si1992/Uksi_19920588_en_2.htm

⁸ www.opsi.gov.uk/si/si1992/Uksi_19920588_en_3.htm

⁹ Defra has recently consulted on proposals for local authorities to introduce financial incentive schemes for household waste.

30. Paragraph 5 lists –“*Waste from residential hostels, a residential home or from premises forming part of a university, school or other educational establishment or forming part of a hospital or nursing home*”. Some authorities have interpreted this to mean that only waste from the residential parts of educational establishments and hospitals should count as household waste for the purposes of Schedule 2 and the rest of the waste from these sources should be treated as commercial waste.
31. The existing guidance (see footnote 11 below) is clear and states – *When considering whether waste from a particular site or part of a site is household waste, the question to be asked is “do the premises in question form part of a university, hospital etc?” If the answer to this question is “yes” then, subject to the provisions of the 1992 Regulations, the waste may be considered to be household waste. Among the provisions of the 1992 Regulations which may be relevant are those which classify clinical waste and waste arising from works of construction or demolition as industrial waste.*
32. Therefore, Defra’s view is that all waste arising from premises forming part of a school, university, other educational establishment¹⁰, hospital or nursing home, that is owned and operated by that organisation is household waste falling within paragraph 5 of Schedule 2, except any clinical, construction or demolition waste arising from the premises.
33. Where an educational establishment or hospital allows a business or businesses to operate from its buildings e.g. a book shop in a university or snack bar in a hospital, waste arising from these sources would be commercial waste and the WCA would be entitled to charge for both collection and disposal of this waste.
34. Defra has also been asked to clarify the situation where an educational establishment hires out its residential facilities outside term time. This will depend on whether the service(s) offered by the educational establishment qualifies it as a hotel within the meaning set out in section 1(3) of the Hotel Proprietors Act 1956. If it does, waste arising from the premises when used in this way would fall under schedule 4 of the CWR and so should be treated as commercial waste. Otherwise it would be a residential hostel which is covered by the same paragraph in schedule 2 of the CWR as educational establishments and therefore would be household waste for which a charge for collection could be imposed.

Caravan and camp sites

35. There is also evidence that some waste authorities have classified waste from caravan and camp sites in a variety of ways. Domestic

¹⁰ This applies to all educational establishments, including those in the private sector not just those under Local Education Authorities (LEA) control.

property on the site, which could include caravans used as permanent homes, would be entitled to free waste collection like any other home.

36. Defra's view regarding waste from the tents, caravans and chalets used for holiday accommodation is that such waste falls under paragraph 6 of schedule 2 and therefore into the category of household waste for which a charge for collection can be made.
37. Waste from commercial facilities on caravan or camp sites, such as shops, bars, clubs and restaurants should be classified as commercial waste and therefore can incur a charge for waste disposal as well as collection.

Charities and charity shops

38. Paragraph 15 lists "*waste from premises occupied by charities and used wholly or mainly for charitable purposes*". While most waste authorities do classify waste from charities as household waste, numerous waste authorities have chosen to classify waste from charity shops as commercial waste. In Defra's view this is an incorrect interpretation of the regulations, and in 2006 Defra issued an email to those authorities it was aware of, drawing their attention to this.
39. Section 64(10) of the Local Government Finance Act 1988 confers "charitable purpose" status on premises which sell wholly or mainly donated goods, and where the proceeds themselves go to a charitable purpose. Therefore waste from charity shops should be treated the same as waste from charities, namely as household waste. Schedule 2(15) of the CWR allows waste authorities to make a charge for the collection of household waste from charity shops.

Prisons and other penal institutions

40. Paragraph 16 lists "*waste from a prison or other penal institution*". The issue here is whether the waste arising from the office, workshops or other facilities of a penal institution should also be included in this category (household waste for which a charge for collection can be made). As the reference is simply to "*waste from a prison...*", there is a very strong case that a prison office forms part of the prison. It is Defra's view that waste arising from the prison office etc is included in the category and so a charge for collection may be made but not for disposal.

The Household Waste Recycling Act (HWRA)

41. The HWRA amended the EPA to place a duty on all English waste authorities with a duty under section 45(1)(a) of the EPA, to make arrangements for the collection of at least two types of recyclable waste together or individually separated from the rest of the household waste. Some waste authorities have asked whether this duty extends

to household waste listed under Schedule 2 of the CWR (household waste for which a charge for collection can be made). Defra confirms that the duty in section 45A of the EPA also applies to this waste. However, unlike the household waste falling within schedule 1 of the CWR, the authority is entitled to charge for collection of this waste. This means that any holder of household waste that requests an authority with waste collection duties in the area to collect it, and where the exceptions set out in section 45A(2) of the HWRA do not apply, can expect the authority to provide a separate collection of at least two recyclates by 31 December 2010.

42. The exceptions to the duty to make arrangements for the separate collection of recyclable waste set out in section 45A(2) of the EPA, as amended by the HWRA, are broadly the same as the exceptions in section 45(1)(a) of the EPA. Therefore as a rule of thumb where a general household waste collection is provided the authority will be required to provide a collection of at least two recyclates separate from the rest of the waste by 31 December 2010. Furthermore, in cases falling under Schedule 2 where the authority is entitled to recoup its collection costs for the service, it is unlikely that the exception in section 45A(2)(a) would ever apply. After 31 December 2010 any waste collection service from sources covered by schedule 2 of the CWR must include a separate collection of at least two recyclates.

43. All household waste recycled or composted counts towards the authority's household waste recycling and composting performance indicators.

Additional information

44. Defra's interpretation of the regulations set out above

1. has followed consideration of the original guidance issued by the Department of the Environment (DoE) when the EPA and CWR came into force¹¹
2. is in response to a request from the AC for clarification of the CWR and
3. a request from the Ministry of Defence to investigate the difference in approach taken by authorities when collecting army waste, and
4. concerns raised by a number of voluntary organisations at the variation in the way they are treated by waste authorities.

¹¹ For reference, the original guidance issued by the Department of the Environment in 1992 is DoE Circular 14/92. There does not appear to be a website that offers free access to this document; the link below is to one that requires the user to subscribe to the site <http://www.tionestop.com/argon/srch.asp?newsaction=2&hc=0&No=200&help=30&N=4294966869&qs=1&Ne=43&Ny=1&R=1&Ns=%7C0&suppl=5>. You can obtain a paper copy of the Circular from HMSO; the ISBN is 0-11-752665-7

Please note that the views expressed in this letter are those of Defra. It is for waste authorities to have regard to this guidance in exercising their functions under the EPA. Ultimately it will be for the courts to interpret the relevant provisions of the legislation. Your authority should seek its own legal advice if it takes issue with the interpretation set out here.