

Subject: HWRC charges / fly-tipping
Date: Friday, 27 April 2018 at 10:09:06 British Summer Time
From: Peter Silverman - Clean Highways
To: Claire Moriarty - Permanent Secretary DEFRA
CC: Neil Parish MP - Chair Environment Select Committee, Hilary Tanner - Local Gov Assoc
Category: HWRCs, Fly-tipping, DEFRA

Dear Ms Moriarty,

I am writing to express my concern about the way in which the issue of Household Waste Recycling Centre (HWRC) charges, one of the drivers of fly-tipping, has been handled by DEFRA and to recommend some urgent remedial action.

What the law says about HWRC charges:

Under [Section 51 of the Environmental Protection Act 1990](#) councils were obliged to allow residents to deposit their “household waste” free of charge at what have now become known as HWRCs.

However under R2 (2) (a) of [The Controlled Waste Regulations 1992](#) “waste arising from works of construction or demolition, including waste arising from work preparatory thereto” was no longer classified as household waste for the purposes of S51 of the EPA.

The [Controlled Waste \(England and Wales\) Regulations 2012](#) states that: .. notwithstanding the place where it is produced... waste from construction or demolition works, including preparatory works must be treated for the purposes of Part 2 of the EPA (which includes S51) ... as industrial waste. See [Schedule 1 para 3](#) item 9.

“Changes in the law” introduced in 2015, namely, the [Local Authorities \(Prohibition of Charging Residents to Deposit Household Waste\) Order 2015](#), [The Local Government \(Prohibition of Charges at Household Waste Recycling Centres\) \(England\) Order 2015](#) and [The Local Authorities \(Prohibition of Charging Residents to Deposit Household Waste\) Order 2015](#) did not alter matters as all three Orders state that: ““household waste” has the same meaning as in section 75 of the Environmental Protection Act 1990(b) as read with regulation 3 of, and Schedule 1 to, the Controlled Waste (England and Wales) Regulations 2012”.

This means that construction waste produced in a domestic property, including DIY waste, is not household waste for the purposes of EPA S51 and can therefore be charged for at an HWRC.

What WRAP says:

The [guidance from WRAP](#) (the Waste and Resources Action Programme) is somewhat self-contradictory. It says in 5.1.3 that “Construction and demolition waste from households is not defined as household waste for the purposes of section 51 of the EPA 1990”.

But it then goes on to say that “DIY waste is classed as household waste if it results from work a householder would normally carry out”. However, it gives no justification for this statement and it is not supported anywhere in the legislation.

In table 5.1 it lists as material which can be charged for: *DIY wastes: doors, windows, fitted kitchens, rubble, plasterboard, soil* as well as other building materials, commercial waste and tyres etc.

What the government has said

On page 20 of the [Litter Strategy for England](#) it says in reference to HWRCs: The Government's view is clear: DIY waste is classed as household waste if it results from work a householder would normally carry out. A number of local authorities have introduced additional charges for the deposit of waste which local authorities categorise as 'waste other than household waste'.

On page 21 it goes on to say: We will work with WRAP and local authorities to: review current guidance to ensure this reflects changes in the law and to make clear what can and cannot be charged for at HWRCs (including in respect of DIY waste);

Andrea Leadsom, then Secretary of State for the Environment wrote to Conservative MPs on 10th April 2017 saying that: Measures in the Strategy include... Stopping councils from charging householders for disposal of DIY household waste at civic amenity sites – legally, household waste is supposed to be free to dispose of at such sites – reducing one of the drivers of fly-tipping.

On 16th May 2017 DEFRA wrote to me to say: On HWRCs; as set out in the Litter Strategy, WRAP has been asked to review its existing guidance on HWRCs, to ensure this reflects changes made in the law during 2015 through the Local Authorities (Prohibition of Charging Residents to Deposit Household Waste) Order 2015 and the Local Government (Prohibition of Charges at Household Waste Recycling Centres) (England) Order 2015) and to give further guidance on what can be charged for at HWRCs. WRAP aim to undertake this review during 2017.

Conclusions

The government's view about the classification of DIY waste was based on one sentence in WRAP's guidance which would appear to have no legal basis.

Councils are right in believing they can legally charge residents for the deposition DIY construction waste.

If WRAP were to review their guidance they would be obliged to support this stance.

It does not therefore surprise me that they are not producing revised guidance. Instead they have decided to carry out a survey of councils' current practices. [See this update from DEFRA](#).

Andrea Leadsom was right in saying that these charges are one of the drivers for fly-tipping. Consideration should therefore have been given to recommending their abolition in the Litter Strategy instead of implying that councils should not have been levying them.

Two years have now there been lost in addressing this issue.

Recommendations

That DEFRA should issue a statement, correcting what was said in the Litter Strategy, saying that DIY waste can be charged for at council HWRCs.

That DEFRA recommends to ministers that legislation be introduced to abolish these charges asap with appropriate additional funding being provided to councils.

Ms Moriarty, do you agree with this analysis and will you give consideration to these recommendations?

I look forward to hearing from you.

Kind regards

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