



Department for
Communities and
Local Government

Preventing 'backdoor' charging at household waste recycling centres



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1. The Government believes residents deserve a comprehensive waste and recycling service in return for the £122 a month council tax typical Band D households pay. Long-standing legislation from the Civic Amenities Act 1967 to the Environmental Protection Act 1990 has required local authorities to provide free-to-use household waste recycling centres ('civic amenity sites'; 'tips'; or 'dumps') for their residents to dispose of household rubbish and recycling¹. The Government's 2011 Waste Review upheld this principle.
2. However, the Government is aware that some local authorities have introduced, or plan to introduce, a charge to anybody accessing certain household waste recycling centres to dispose of household waste and/or recycling. The Government understands the local authorities in question deem these centres 'discretionary' so outside requirements of the Environmental Protection Act 1990. By classifying them as 'discretionary' they are attempting to impose a 'backdoor' charge, circumventing the will of Parliament and the Government who have a clearly expressed policy of free-to-use centres for residents.
3. The Government is seriously concerned these charges will inconvenience residents; increase fly-tipping and back-yard burning; and make recycling harder for people rather than its stated objective of making it easier. Widespread charging of those seeking to deposit electrical and electronic goods at such centres would also appear to be a breach of the 2013 Waste Electrical and Electronic Equipment Regulations and could require the UK to establish an entirely independent collection infrastructure for household waste of this type at considerable cost to producers and/or the taxpayer.
4. Accordingly, the Government is now discussing a proposal to use:
 - i) section 94(1) of the Local Government Act 2003 to disapply section 93 of that Act, which enables local authorities to charge for discretionary services, so they cannot use this as the legislation permitting them to charge for use of 'discretionary' household waste recycling centres; and
 - ii) the power under section 5(3) of the Localism Act 2011 to prevent local authorities in England from exercising the general power of competence in section 1 of that Act (which enables them to do anything that individuals generally may do) as the legal basis for charging at 'discretionary' household waste recycling centres.
5. The Government intends to prevent local authorities:
 - i) charging any entry or exit fee for using a 'discretionary' household waste recycling centre for depositing household waste and/or recycling; and
 - ii) charging any fee relating to the quantity of household waste and/or recycling being deposited at a 'discretionary' household waste recycling centre.
6. The Government does not wish for existing household waste recycling centres to close as a result of this proposal. It therefore proposes to exempt those household waste recycling centres currently charging a fee as set out in the above paragraphs 5i) and 5ii). Local authorities will have until April 2020 to make alternative arrangements for such sites.
7. It is 'household' waste and recycling deposited by persons resident in the area of the authority which local authorities, in accordance with the Environmental Protection Act

¹ A non-exhaustive list of what constitutes household waste and household recycling can be found in WRAP's *Household Waste Recycling Centre Guide*. See: <http://tinyurl.com/od9pgg3>

1990, are required to accept for free at household waste recycling centres and this is a long established precedent. Charges for other types of waste are permitted and the Government does not intend to prevent local authorities from charging for:

- household waste and/or household recycling from 'non-residents' (persons not resident in the area of the authority);
- waste and/or recycling from commercial premises; or
- 'non-household' waste and/or recycling from residents or non-residents.

8. The draft legislation which would, subject to Parliamentary approval, enshrine the proposal in law is attached at Annexes A and B. It aims to ensure that local authorities adhere to the principles enshrined by Parliament in the Environmental Protection Act 1990 when providing 'discretionary' household waste recycling centres.
9. **This discussion paper invites comments on the Secretary of State's proposed approach to upholding the principle that residents should continue to have free access to household waste recycling centres in their local authority area where they can deposit their household rubbish and recycling for free.**
10. Should a local authority consider closing a household waste recycling centre, it should first explore whether a voluntary or community body, charity, parish council or private business is interested in providing or helping to provide alternative solutions to run the service. The Government is already encouraging voluntary organisations to put forward different ways to deliver public services, including through the Community Right to Challenge.
11. **This discussion paper invites views on how household waste recycling centres at risk of closure can stay open without local authorities resorting to charging their residents to dispose of household waste and recycling.**
12. The Government is seeking views from:
 - All English local authorities and English waste disposal authorities;
 - The Local Government Association; and
 - The waste industry.

The Government would also welcome comments from members of the public, businesses and the voluntary and community sector who are likely to be affected by the proposal. It is grateful for views on whether there are any likely impacts on those who may have protected characteristics under the Public Sector Equality Duty. All comments should be sent by email to HWRCcharging@communities.gsi.gov.uk by 18 February 2015. For enquiries, please contact Padma Juggapah on 030 3444 3512.

Confidentiality and data protection

13. This discussion paper has been planned to adhere to the Cabinet Office's Consultation Principles. Information provided in response to it may be published or disclosed in accordance with access to information regimes (primarily the Freedom of Information Act 2000, the Data Protection Act 1998, and Environmental Information Regulations 2004). Under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and we cannot give an assurance of confidentiality in all circumstances. The Department for Communities and Local Government will process personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean it will not be disclosed to third parties.

 STATUTORY INSTRUMENTS

2015 No.

LOCAL GOVERNMENT, ENGLAND

Local Government (Prohibition of Charges for the Deposit of
Household Waste at a Household Waste Recycling Centre)
(England) Order 2015

Made - - - - ***

Laid before Parliament ***

Coming into force - - 31st March 2015

The Secretary of State makes the following Order in exercise of powers conferred by sections 94 and 123(1) of the Local Government Act 2003(a):

Citation, commencement and application

1.—(1) This Order may be cited as the Local Government (Prohibition of Charges for the Deposit of Household Waste at a Household Waste Recycling Centre) (England) Order 2015.

(2) This Order shall come into force on 31st March 2015.

(3) Subject to article 4, this Order applies in relation to relevant authorities in England.

Interpretation

2. In this Order—

“the 1990 Act” means the Environmental Protection Act 1990(b);

“the 2003 Act” means the Local Government Act 2003;

“household waste” shall have the same meaning as in section 75 of the 1990 Act(c) as read with Schedule 1 to the Controlled Waste (England and Wales) Regulations 2012(d); and

“household waste recycling centre” means a place provided by a relevant best value authority specified in article 4 where persons resident in its area may deposit their household waste.

(a) 2003 c. 26. Section 94 was amended by Local Government and Public Involvement in Health Act 2007 (c. 28), Schedule 7 paragraph 3(4)(a) to (c). The power under section 94 is exercisable in relation to Wales, by the Welsh Ministers; see the definition of “appropriate person” in section 124 of the Act, and paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32).

(b) 1990 c. 43.

(c) Section 75 was amended by the Environment Act 1995 (1995 c. 25), section 120(1), (3) Schedule 22, paragraphs 88 (1) to (4) and Schedule 24, SI 1994/1056, SI 2005/894, SI 2006/937, SI 2011/988. There is other amending legislation in relation to Scotland. Modified by S.I. 1994/1056, regulation 19, Schedule 4, Part I, paragraph 9, to include “Directive waste” as defined in regulation 1(3), Schedule 4, Part II of those Regulations.

(d) SI 2012/ 811, as amended by SI 2012/2320.

Disapplication of section 93 of the Local Government Act 2003

3. Section 93 of the 2003 Act(a) does not apply in relation to the relevant authorities specified in article 4, when—

- (a) permitting persons resident in their areas to deposit household waste at a household waste recycling centre; or
- (b) granting persons resident in their areas entry to and exit from a household waste recycling centre.

Authorities to which this Order applies

4. The relevant authorities to which this Order applies are—

- (a) an authority established for an area under section 10 of the Local Government Act 1985(b) (waste disposal authorities);
- (b) a county council;
- (c) a district council;
- (d) a London Borough Council;
- (e) the Common Council of the City of London; and
- (f) the Council of the Isles of Scilly.

Transitional provision

5. Where on 31st March 2015 a relevant authority to which this Order applies, in exercise of the power in section 93 of the 2003 Act, charges persons resident in its area when—

- (a) permitting them to deposit household waste at a household waste recycling centre; or
- (b) granting them entry to and exit from a household waste recycling centre

section 93 shall continue to apply in relation to the relevant authority in order for it to continue to charge persons resident in its area to do those things at that household waste recycling centre until 31st March 2020.

Signatory by the authority of the Secretary of State for Communities and Local Government

	<i>Name</i>
	Parliamentary Under Secretary of State
Date	Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order disapplies section 93(1) of the Local Government Act 2003 (“the 2003 Act”) in connection with places provided by certain best value authorities for residents to deposit household waste (“a household waste recycling centre”). The best value authorities to which this Order applies are specified in article 4.

(a) Section 93 was amended the Local Government and Public Involvement in Health Act 2007 (2007 c.28), section 136(3), Schedule 7, paragraph 3(1), (3)(a); the Localism Act 2011 (2011 c. 20) sections 12(4), 14(2), 237, and Part 3 of Schedule 25. There is other amending legislation in relation to Wales.

(b) 1985 c. 2. Section 10 was amended by Environmental Protection Act 1990 (1990 c. 43), section 162 and Schedule 15, paragraph 26.

Section 93(1) of the 2003 Act enables best value authorities to charge for discretionary services. Discretionary services are those services that an authority has the power but not a duty to provide. The disapplication of section 93(1) will prevent the best value authorities from using the power given by that section for the purpose of charging their residents to deposit household waste at a household waste recycling centre. Such services provided by a best value authority would be a discretionary service and separate from any arrangements that waste disposal authorities have a duty to make for the provision of places for residents to deposit their household waste without charge, under section 51(1)(b) of the Environmental Protection Act 1990.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

Draft Order laid before Parliament under section 235(6) and (7)(b) of the Localism Act 2011, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2015 No.

LOCAL GOVERNMENT, ENGLAND

Local Authorities (Prohibition of Charging Residents to Deposit Household Waste) Order 2015

Made - - - - ***

Laid before Parliament ***

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by section 5(3) and (5) and 235(2)(b) of the Localism Act 2011(a).

In accordance with section 5(7) of that Act, the Secretary of State has consulted such local authorities, such representatives of local government and such other persons as he considers appropriate.

A draft of this Order was laid before and approved by resolution of each House of Parliament in accordance with sections 235(6) and (7)(b) of that Act.

Citation and commencement

1.—(1) This Order may be cited as the Local Authorities (Prohibition of Charging Residents to Deposit Household Waste) Order 2015.

(2) This Order shall come into force on the twenty eighth day after the day it is made.

Interpretation

2. In this Order—

“the 1990 Act” means of the Environmental Protection Act 1990(b);

“household waste” shall have the same meaning as in section 75 of the 1990 Act(c) as read with Schedule 1 to the Controlled Waste (England and Wales) Regulations 2012(d);

(a) 2011 c.20.

(b) 1990 c. 43.

(c) Section 75 was amended by section 120(1) and (3) of, and paragraphs 88 (1) to (4) of Schedule 22 and Schedule 24 to, the Environment Act 1995 (1995 c. 25), SI 1994/1056, SI 2005/894, SI 2006/937, SI 2011/988. There is other amending legislation in relation to Scotland. Modified by S.I. 1994/1056, regulation 19, Schedule 4, Part I, paragraph 9, to include “Directive waste” as defined in regulation 1(3), Schedule 4, Part II of those Regulations.

(d) SI 2012/ 811, as amended by SI 2012/2320.

“household waste recycling centre” means a place provided by a local authority(a) where persons resident in its area may deposit their household waste.

Prohibition of Local Authorities using the general power of competence to charge residents at places where they may deposit household waste

3.—(1) A local authority may not, in exercise of the general power, charge persons resident in its area to—

- (a) deposit household waste at a household waste recycling centre; or
- (b) enter into or exit from a household waste recycling centre.

Transitional provision

4. Where on 31st March 2015 a local authority is, in exercise of the general power, charging persons resident in its area to—

- (a) deposit household waste at a household waste recycling centre; or
 - (b) enter into or exit from a household waste recycling centre
- the local authority can continue to do so at that household waste recycling centre until 31st March 2020.

Signed on behalf of the Secretary of State for Communities and Local Government

Parliamentary Under Secretary of State
Date Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order prohibits local authorities in England from using the general power of competence in section 1 of the Localism Act 2011 (“the 2011 Act”) for the purpose of charging residents to deposit their household waste at a place which has been provided for such residents to deposit household waste (a household waste recycling centre). Section 8 of the 2011 Act defines “local authority” and “the general power”. The Order also prohibits such authorities from using the general power to charge persons to enter into or exit from a household waste recycling centre.

Section 1 of the 2011 Act provides a general power for certain local authorities in England, giving them the same power to act that an individual generally has. Section 5(3) of the 2011 Act gives the Secretary of State the power to make an order restricting what a local authority may do under the general power.

This Order does not impact upon the arrangements that waste disposal authorities have a duty to make for the provision of places in order for residents to deposit their household waste without charge, under section 51(1)(b) of the Environmental Protection Act 1990.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

(a) See section 8(1) for the definitions of “local authority” and “the general power”.