



Department
for Environment
Food & Rural Affairs

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Consultation on the draft Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015

Summary of responses and government response

March 2015



Llywodraeth Cymru
Welsh Government

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Purpose of the consultation

In April 2011 the UK Government launched the Red Tape Challenge, an initiative to review and remove unnecessary regulation which potentially restricts business growth. The Red Tape Challenge stated that the existing powers for enforcement authorities to seize vehicles suspected of involvement in fly-tipping and waste crime should be strengthened to reduce the burden of this criminal activity on businesses, other organisations and individuals.

In response to the Red Tape Challenge, Defra and the Welsh Government sought views on proposals to commence powers and introduce secondary legislation, to help enforcement authorities to disrupt and prevent illegal waste activities more effectively than at present, reducing the impact of waste crime on the environment, while helping to bring about a level playing field for the legitimate waste industry and encouraging growth through investment.

The joint England and Wales consultation on the draft Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015 (the draft Regulations) (and the associated commencement order) ran for a seven week period from 15 December 2014 to 3 February 2015. This document summarises the responses to the consultation and details how the Defra and the Welsh Government have taken them into account in establishing their policy decision.

Overview of the respondents

There were **46** responses to the consultation (**31** for England and **15** for Wales): **30** from local authorities, **4** from professional bodies, **4** from trade associations, **2** from private businesses, **5** from individuals and **1** from a charity.

Key statistics

- 45 (98%) of the respondents were in support of the proposal.
- 1 (2%) of the respondents was against the proposal.

Local authorities – 30

Most responses to the consultation came from local authorities and local authority waste partnerships. Local authorities welcomed the proposals and agreed that the new enforcement options would enable regulators to deter and disrupt illegal waste activities more effectively. 23 local authorities suggested that guidance on the draft Regulations would be useful. Seven local authorities considered that guidance was not needed or did not comment.

Professional bodies - 4

There were four responses from professional bodies. These respondents all supported the proposals and asked for guidance to ensure a consistency of approach to ensure that the seizure process is transparent.

Trade associations - 4

There were four responses from trade associations. These respondents all supported the proposals, agreeing that they would contribute to a reduction in fly-tipping incidents. This group requested that guidance be provided to ensure that their members understand the powers.

Private businesses - 2

There were two responses from private businesses. One supported the proposals, whilst the other opposed the commencement of these powers.

Other responses - 6

Five individuals and one charity made up the other responses. All this group supported the proposals.

Summary of questions

Defra and the Welsh Government directly contacted over 1000 stakeholders inviting their views on the consultation. The consultation was promoted using the @DefraResource twitter account and was available to view on the Citizen Space and Welsh Government websites and anyone with an interest had the opportunity to respond.

The consultation contained six questions. These were:

Question 1) Do you have any general comments on the draft statutory instruments at Annex A and B?

Question 2) Is the procedure for dealing with seized property clear?

Question 3) What benefits might be derived from guidance and what aspects of the draft Regulations would you like addressed in guidance?

Question 4) Do you have any views on the estimated costs and benefits to business?

Question 5) Do you have any views on the estimated costs and benefits to enforcement authorities?

Question 6) Are there any other costs or savings that you expect to receive as a result of the proposed changes?

Question 1) Do you have any general comments on the draft statutory instruments at Annex A and B?

Unattributed quotations have been added to illustrate the views expressed.

Key statistics

- 41 (89%) respondents answered this question.
- 7 (17%) of the 41 respondents raised concerns over the difference in retention periods for local authorities, as compared to the Environment Agency and Natural Resources Wales, in respect of forfeiture offences (certain offences under the Environmental Protection Act 1990 and the Environmental Permitting (England and Wales) Regulations 2010).

Key themes

- The majority of respondents welcomed the proposals and saw them as a proactive and timely enforcement / deterrent option.

'The streamlined ability to seize vehicles implicated in waste offences and fly tipping and the enhanced retention periods with the disposal procedures are welcomed'.

'These changes will make enforcement both easier and cheaper, and are particularly welcome during these difficult financial times'.

'We particularly welcome the extension of these powers to cars and the inclusion of the householders' duty of care'.

- Six respondents had concerns that the proposed 15 working day retention period for local authorities when investigating a forfeiture offence would not always be sufficient time and therefore requested that local authorities, like the Environment Agency and Natural Resources Wales, should be able to retain seized property for up to 30 working days.

'We would seek a consistent 30 day retention period to be made available to both the Environment Agency and local authorities as opposed to the 15 days retention period proposed for local authorities'.

- One local authority stated that it would prefer a 21 day period for vehicle retention for all authorities to ensure that the investigative process is not cut short by the need to return the vehicle to its owner.
- Two respondents raised concerns over the longer 30 day retention period for the Environment Agency and Natural Resources Wales, on the basis that smaller legitimate waste business could go out of business if a mistake was made by those authorities.

- One local authority commented that there was a two day difference in respect of the end of the period for the publication of the seizure notice, depending on whether it is published in a newspaper or on the authority's website.
- One respondent suggested a number of changes to assist private landowners in dealing with fly-tipping incidents on their land – including a new system to allow private landowners to take any fly-tipped waste to a municipal waste facility.

Defra and Welsh Government response

We are pleased that there was almost unanimous support for the proposals to commence these powers to help enforcement authorities to disrupt and prevent illegal waste activities more effectively than at present, reducing the impact of waste crime on the environment, while helping to bring about a level playing field for the legitimate waste industry and encouraging growth through investment.

We have noted that six respondents had concerns that 15 days was not always sufficient time to commence legal proceedings for forfeiture offences and requested that local authorities, like the Environment Agency and Natural Resources Wales, should likewise be able to retain property for 30 days. We also noted that two respondents raised concerns about the 30 day retention period for the Environment Agency and Natural Resources Wales; and six local authorities suggested that the potential costs of property storage for 15 days are significant.

Taking into account all the responses, we believe that the provision of a 15 day retention period (once a valid claim has been made by the property owner) for local authorities to investigate forfeiture offences strikes the right balance between the operational and financial needs of those authorities, and the rights of those individuals whose vehicles are seized. We consider that a longer retention period should be available to the Environment Agency and Natural Resources Wales when investigating forfeiture offences because they tend to deal with more serious and complex cases of illegal waste dumping (including organised tipping and criminal business practice), compared to local authorities. This position was supported by evidence gathered in a 2009 consultation on similar proposals, which focused on the retention period for enforcement authorities, and in subsequent engagement with enforcement authorities during the development of the draft Regulations.

Regulation 8 has been updated to amend the difference between the publication period of the seizure notice in a newspaper and on a website. Regulation 8 now requires that the publication period in both cases ends 15 working days after the date of the seizure notice.

With this in mind, Defra and the Welsh Government intend to proceed with:

- a) commencing sections 37 and 46 of the Clean Neighbourhoods and Environment Act 2005 (the 2005 Act) via the Clean Neighbourhoods and Environment Act 2005 (Commencement No. 6 and Saving) (England and Wales) Order 2015; and

- b) introducing supporting secondary legislation, as permitted by the 2005 Act, entitled the Control of Waste (Dealing with Seized Property) (England and Wales) Regulations 2015.

Question 2) Is the procedure for dealing with seized property clear?

Key statistics

- 36 (78%) respondents replied directly to this question.
- 28 (78%) of the 36 respondents believed that the procedure for dealing with seized property is clear.

Key themes

- A number of respondents stated that the procedures for dealing with seized property were clear and would help reduce the cost of seizing vehicles for those enforcing authorities who do this on a regular basis.

'The proposed legislation will reduce the cost of seizing vehicles to those enforcing authorities who do this on a regular basis'.

- A number of respondents commented on regulation 7(1)(b), asking why there was reference to publication by enforcement authorities of seizure notices in a newspaper if simplification of the existing regime is one of the aims of the proposals.
- A professional body queried how enforcement authorities will determine that seized property should be immediately disposed of (regulation 22).
- Some respondents felt that the seizure procedure was clear but additional guidance could be useful.

'It is relatively clear but additional guidance with some typical scenarios would be of great help'.

'Yes, the procedure is clear, although further guidance may be necessary on how the seized property is then dealt with, whether it is retained and returned, retained for the duration of any subsequent action, sold, or otherwise disposed of'.

- One professional body noted that the procedure is relatively clear to lawyers and others used to working with legislation and regulations but not for the lay person.

- Some local authorities thought that the procedure for dealing with seized property was more complex than the existing regime.

Defra and Welsh Government response

We are pleased that respondents feel that the procedure for dealing with seized property is generally clear.

We have noted that a number of respondents have suggested that additional guidance on the process would help enforcement authorities better understand the process. A guidance document will be produced for enforcement authorities, explaining in more detail their rights and responsibilities when exercising these powers.

Two respondents queried how enforcement authorities would determine that property must be immediately disposed of. If in the opinion of the enforcement authority, the contents or load of any seized property or the property itself presents an immediate hazard to health or risk of pollution of the environment, then the authority may dispose of them immediately. We believe that this power should be used only in exceptional circumstances and the enforcement authority will need to set out clearly why it believes that immediate disposal is necessary.

The new Regulations will reduce unnecessary bureaucracy for frontline enforcement authority staff, allowing them to carry out more effective enforcement and contribute to a reduction in illegal waste activity. One of the proposed changes in the procedure for dealing with seized property is to permit enforcement authorities to publish seizure notices online, as an alternative to publication in a newspaper. We believe that the majority of enforcement authorities will use this new publication process but we have retained the option of publishing notices in a newspaper if authorities wish to do so.

Question 3) What benefits might be derived from guidance and what aspects of the draft Regulations would you like addressed in guidance?

Key statistics

- 36 (78%) respondents replied directly to this question.
- 35 (97%) of the 36 respondents highlighted the benefits of guidance.
- 1 (3%) of the 36 respondents saw no benefit from additional guidance.

Key themes

- Some respondents thought there were some clear benefits in having guidance to secure a consistent proactive approach to the application of the draft Regulations across the country, and ensure the rules are followed and are transparent.

'Guidance would aid consistency and uniformity of approach'.

'Additional guidance on these regulations would be invaluable to our partners working to enforce against fly-tipping and environmental crime'.

- Some respondents felt that model notices (for example, in respect of regulations 18, 23 and 24) would assist enforcement authorities.
- Some respondents felt that any guidance should include case studies and scenarios for officers of enforcement authorities to refer to.

'Specific guidance, which includes worked examples and example notices is essential for clarity and ease of use. This will aid consistency of enforcement work across all agencies and authorities and encourage all bodied to respond accordingly'.

- One local authority suggested that offences under the Scrap Metal Dealers Act 2013 in relation to seizure for not having a valid permit to collect scrap should be included.
- One local authority suggested that it would be useful to have specific guidance on asbestos dust management arising from entire process.
- One local authority and a professional body suggested that guidance should contain examples of when property should be immediately disposed of and define who should make this determination.
- Two trade associations suggested that the public may not be aware of their duty of care obligations so guidance must be provided to ensure that they understand what they must do.

'This guidance will not only act as an educational tool for those unaware of their Duty of Care or waste regulations, but will also act as a deterrent to those who knowingly act outside of the rules'.

Defra and Welsh Government response

We have noted that a number of respondents have suggested that guidance would offer significant benefits and clarity for understanding the process. A guidance document will be produced for enforcement authorities, explaining in more detail their rights and responsibilities when exercising these powers. This document will also be useful to

anybody who has their vehicle seized as it sets out the circumstances in which the vehicle can be returned to them.

This new guidance will be published on www.gov.uk to coincide with the powers coming into force.

Question 4) Do you have any views on the estimated costs and benefits to business?

Key statistics

- 34 (74%) respondents replied directly to this question.
- 29 (85) of the 34 respondents gave views on the costs and benefits to business.

Key themes

- 20 (59%) of the 34 respondents agreed that the proposals would bring more businesses into the regulated industry sector, and by financially penalising those who act illegally will go some way to levelling the playing field for legitimate waste operators.

'Legitimate business will benefit through seeing a reduction in the number of operators able to undercut them because they don't pay for waste carrier registration and fly tip to avoid disposal costs'.

'Two significant benefits of the proposed regulations to legitimate waste operators are the targeting of rogue traders who our enforcement teams regularly encounter and in helping to create a level playing field of compliance'.

- Two respondents welcomed the potential saving of £15 million over five years to businesses that have experienced fly-tipping on private land.
- One local authority suggested that these proposals would benefit rural business less than those businesses in urban areas.

Defra and Welsh Government response

We are pleased that the majority of respondents support the proposals and agree that they will bring more businesses into the regulated industry sector, and go some way to levelling the playing field for legitimate waste operators.

As a result of the strength of support, Defra and the Welsh Government intend to proceed with the proposal to commence the powers in the 2005 Act and introduce supporting secondary legislation.

Question 5) Do you have any views on the estimated costs and benefits to enforcement authorities?

Key statistics

- 36 (78%) respondents replied directly to this question.
- 21 (58) of the 36 respondents were generally content with the estimated costs and benefits.

Key themes

- A number of local authorities stated that the cost to enforcement authorities is difficult to quantify at this early stage but as local authorities are major landowners, any property seizure costs would be offset by the reduction in fly-tipped material and its associated costs.

'Enforcement officers will now see a good tool to use to combat fly tipping offences. This should also increase prosecutions and therefore recovery of costs.'

- A number of local authorities suggested that there could be costs to enforcement authorities in setting up new processes (e.g. locating storage facilities and providing training) to execute the seizure powers effectively but saw the simplified regime as an important tool to combat waste crime.
- A number of local authorities agreed that the powers will make the enforcement process before the commencement of legal proceedings more effective, ensuring better use of local authority time and resources.

'This piece of legislation will assist initial investigations and identify offenders far quicker than the current process. Freeing up Officer, Police and Court time with the original offence of fly tipping still being applicable and pursuable.'

- A number of local authorities stated that they do not have the equipment to remove vehicles or storage compounds and would have to contract out this work, which would incur costs.
- Two local authorities and an individual queried whether storage costs would be recovered immediately prior to the release of the vehicle back to the legal owner, as with abandoned vehicle legislation.

Defra and Welsh Government response

We have noted that a number of respondents suggested there would be additional costs for enforcement authorities if seizure powers are used more often. Despite these possible additional enforcement costs, we are pleased that respondents support these proposals,

recognising that any property seizure costs would be offset by the reduction in fly-tipped material and its associated costs.

We have noted that three respondents have queried whether costs incurred as a result of the storage of the seized property could be recovered prior to the vehicles be returned to its legal owner. An application for enforcement costs associated with property seizure can be made to the court by the enforcement authority following conviction for a forfeiture offence. However, in the absence of a conviction, the primary legislation does not allow an enforcement authority to charge seizure and storage costs when a successful claim for the property is made.

We have amended the definition of “net proceeds of sale” in regulation 25 to ensure that, where the owner of the property makes a valid claim after its sale, the enforcement authority is only required to return the sale proceeds after the deduction of any costs incurred as a result of the sale (as well as after the deduction of any costs of the seizure and retention of the property).

Question 6) Are there any other costs or savings that you expect to receive as a result of the proposed changes?

Key statistics

- 36 (78%) respondents replied directly to this question.
- Of the 36 respondents who answered, 16 (44%) suggested additional costs and / or savings.

Key themes

- Six respondents replied that there would be long-term savings but there needs to be publicity to raise awareness of these powers.

‘This could be a fantastic deterrent to would be fly tippers and unlicensed waste carriers. Once they know they risk losing their vehicle and their livelihood, at least in the short term, it should redress the imbalance and tip it in favour of operating within the law. National and local publicity would help reduce offences, and therefore costs to the public’.

- One local authority responded that the removal of the requirement for a uniformed police officer to stop vehicles would provide additional savings in time and cost.
- Some respondents suggested that the removal of an offender’s means of transport may contribute to a reduction in repeat offences and encourage compliance with the current licensing regulations to ensure waste carriers are registered with the Environment Agency or Natural Resources Wales.

- One private business stated that there were no costs or savings from the proposals.

Defra and Welsh Government response

We are pleased that respondents have identified that there will be long-term savings as a result of the commencement of these new powers due to a reduction in waste crime and any associated clean-up costs.

We have noted suggestions from respondents of the need to raise awareness of the enhanced powers to ensure that they act as a deterrent for possible offenders. We plan to raise awareness of the commencement of these powers through the LGA, National Fly-Tipping Prevention Group, FlyCapture, Fly-tipping Action Wales and social media to ensure that enforcement authorities, waste management companies and the public are aware that the powers have come into force and this should act as a deterrent.

Annex A: list of respondents

AA Properties Wales (Services)	Leicestershire Waste Partnership
Bedford Borough Council	Local Government Association
Birmingham City Council	London Borough Waltham Forest
Borough Council of Kings Lynn & West Norfolk	National Association of Waste Disposal Officers (NAWDO)
Braintree District Council	Neath Port Talbot County Borough Council
Burnley District Council	National Farmers Union (NFU)
Caerphilly County Borough Council	National Farmers Union (NFU) Cymru
Carmarthenshire County Council	North Norfolk District Council
Chorley Borough Council	Peterborough City Council
Chartered Institute of Waste Management	Private individuals x 5
Chartered Institute of Waste Management Cymru Wales	Royal Borough of Greenwich
Country Land and Business Association (CLA)	Runnymede Borough Council
Country Land and Business Association (CLA) Wales	Solihull Metropolitan Borough Council
Dartford Borough Council	South Norfolk District Council
Fareham Borough Council	St Albans City & District Council
Flintshire County Council	Surrey Waste Partnership
Glass Tech Recycling Ltd	UK Environmental Law Association (Wales)
Halton Borough Council	Vale of Glamorgan Council
Hertfordshire Waste Partnership	Wealden District Council
Institution of Civil Engineers Wales Cymru	
Keep Wales Tidy	
Kent County Council	
Local Authority Recycling Advisory Committee (LARAC)	