

**EXPLANATORY MEMORANDUM TO**  
**THE SITE WASTE MANAGEMENT PLANS REGULATIONS 2008**

**2008 No. 314**

1. This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 These regulations require a site waste management plan to be prepared and implemented by clients and principal contractors for all construction projects with an estimated cost greater than £300,000 excluding VAT. The plans must record details of the construction project, estimates of the types and quantities of waste that will be produced, and confirmation of the actual waste types generated and how they have been managed. More detailed reporting requirements apply to projects exceeding £500,000. The regulations set out a range of offences relating to the failure to produce or implement a plan, punishable by a fine of up to £50,000 on summary conviction, or an unlimited fine on conviction on indictment.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 These Regulations are made in exercise of powers in the Clean Neighbourhoods and Environment Act 2005 to introduce a requirement for the preparation of plans for the management and disposal of waste created in the course of construction or demolition works, and for compliance with them. The Clean Neighbourhoods and Environment Act 2005 introduced a range of new powers and amendments to existing legislation to help improve the quality of the local environment, following a review of the legislative framework for providing and maintaining a clean and safe local environment that accompanied the cross-Government report *Living Places – Cleaner, Safer, Greener* in 2002.

4.2 Commitments were made during the course of Parliamentary proceedings on the Clean Neighbourhoods and Environment Bill that the Regulations would cover the content and preparation of the plans and who the provision affects, and that further consideration would be given to the use of a 'specified value' in making the Regulations.

**5. Territorial Extent and Application**

5.1 This instrument applies to England.

## 6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

7.1 The policy objectives of the Site Waste Management Plans Regulations 2008 are to help prevent the illegal disposal of waste by ensuring that those responsible for construction projects know the intended destination of waste removed from the site, that their waste is being managed by legitimate registered waste carriers and, as far as possible, that their waste is managed responsibly and in line with waste management controls. The plans also aim to improve materials resource efficiency within the construction sector by reducing the amount of waste produced and encouraging recovery of as much as possible of the remainder.

7.2 The construction industry is one of the biggest users of materials in the UK, yet materials resource efficiency in this sector is relatively poor. At present, the sector uses about 420 million tonnes of materials per year, of which some 109 million tonnes ends up as waste. A further problem arising from poor resource efficiency and inconsistent approaches to managing waste is the illegal disposal of waste. In 2006/7 local authorities reported 87,597 incidents of construction waste fly-tipping and over 31% of the most serious fly-tips dealt with by the EA involved construction related waste.

7.3 Illegal waste disposal, including fly-tipping, is an antisocial activity which reduces the quality of life for people living in both rural and urban areas by adversely affecting amenity benefit and reducing civic pride. As well as the significant environmental and health risks posed by waste crime, clearing-up fly-tipped waste presents significant costs for the public purse as well as private landowners. In the financial year 2006/7 the cost borne by the Environment Agency was £150,000 for clear-up alone and local authorities spent £75.8 million on both clear-up and enforcement.

7.4 The Government is developing and implementing measures to tackle illegal waste disposal through its *Strategy on Illegal Waste Activity* which forms part of the wider Respect and Cleaner, Safer, Greener agendas, as well as the *Waste Strategy 2007*, in England. This includes a range of powers that were brought forward under the Clean Neighbourhoods and Environment Act 2005. A separate review of the controls regulating the handling, transfer and transport of waste is currently taking place to ensure that this associated regime operates effectively and is easy to comply with. This review will particularly address compliance issues among small businesses.

7.5 Site waste management plans are also a key policy measure in progressing the Government's proposed targets for reducing construction waste as set out in Defra's *Waste Strategy 2007* and BERR's draft *Sustainable Construction Strategy*. In 2004 the then DTI introduced a voluntary code for Site Waste Management Plans, and this is already included as a mandatory component of CLG's *Code for Sustainable Homes*. The introduction of a mandatory requirement aims to create a level playing field for the industry, as all construction projects exceeding the threshold of £300,000 will be required to prepare and implement a Site Waste Management Plan rather than having the option of doing so. The requirements are scaled in order to ensure there are no disproportionate impacts on small businesses.

## **Consultation**

7.6 Consideration of the key aspects under-pinning Site Waste Management Plans began in September 2005 following the enactment of the Clean Neighbourhoods and Environment Bill. An informal working group representing Government Departments and construction industry interests was set up and workshops were held in London and Wales to consider the regulatory options. 15 further workshop events were held in 2006, with a total attendance of 483 representatives from the construction sector.

7.7 A formal 14 week written consultation on the proposals and a draft set of regulations took place from 2 April to 9 July 2007. During this period 3 workshops were held with representation from the construction and waste management industries and the proposed regulators – local authorities and the Environment Agency. The outcome of this consultation demonstrated clear support from across the range of stakeholder types with 75% of all respondents in favour of mandatory Site Waste Management Plans, and 58% of the responses from industry supporting the statutory proposition. A fuller explanation of the consultation process and responses received is provided in section 5 of the Impact Assessment and in the *Summary of Responses to the Consultation* both of which are available on the Defra website.

7.8 A particular consideration for the consultation was the issue of the ‘specified value’ requiring a site waste management plan to be prepared. The consultation proposed a minimum threshold level of £250,000 with more detailed reporting requirements from £500,000. Following the consultation and further analysis of the costs and benefits of preparing and implementing Site Waste Management Plans, the bottom threshold level has been raised to £300,000.

## **Guidance**

7.9 Non-statutory guidance has been prepared to accompany the Regulations, explaining the measures and how they should be applied in practice. This guidance is aimed at both the construction industry and regulators with the power to enforce the provisions. A draft version of the guidance will be published on the Defra website inviting comment from stakeholders, and a final version produced on commencement of the measures.

## **8. Impact**

8.1 An Impact Assessment has been prepared and is available on the Defra website.

8.2 The impact on the public sector is the cost associated with the power for local authorities and the Environment Agency to enforce the provisions, and the benefit to be gained from reduced fly-tipping and therefore a cleaner, safer, greener local environment. Therefore, over longer time-scales savings should also be secured in LA functions such as cleaning-up fly-tipping once implementation of the Regulations alongside the other powers available for reducing illegal waste disposal has increased levels of compliance. The proposed regulation will lead to some additional court cases, although prosecutions for non-compliance are likely to be combined with prosecutions for other offences, e.g. the waste duty of care, therefore the anticipated additional impact on the Courts is small.

8.3 Full details of the impacts and costs for both the public and private sectors are provided in the Impact Assessment.

## **9. Contact**

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