

Management of asbestos waste from domestic property

1. Following the implementation of the Special Waste Regulations 1996¹, representations which the Department has received indicate that there is some uncertainty about the powers and duties of local authorities for the collection and disposal of asbestos waste from domestic property and the provisions which apply in relation to it at what are generally known as “civic amenity sites.”

2. In the light of these representations, the Department wishes to write setting out its views on the issue in relation to the arrangements for the collection and disposal of waste in England and Wales. These views are subject, of course, to the proviso that the interpretation of the law is a matter for the Courts.

3. The definitions of household, industrial and commercial waste are contained in section 75 of the Environmental Protection Act 1990 (the 1990 Act). However, there are three provisions in the Controlled Waste Regulations 1992² (the 1992 Regulations) which are relevant to the classification of asbestos waste from domestic property as household or industrial waste and, as a consequence, the powers and duties of waste collection authorities and waste disposal authorities in relation to it under Part II of the 1990 Act. These are:-

(a) **Regulation 3(1)** which provides that asbestos waste is not to be treated as household waste for the purposes of section 33(2) of the 1990 Act (treatment, keeping or disposal of household waste within the curtilage of a dwelling). The effect of this provision is that householders are not allowed to dispose of their own asbestos waste on their premises without a waste management licence;

(b) **Schedule 2 paragraph 12** which provides that asbestos waste is a type of waste for which a waste collection authority may recover a reasonable charge for its collection under section 45(3) of the 1990 Act; and

(c) **Regulation 5(2)** which provides that waste arising from works of construction³ or demolition⁴ is to be treated as industrial waste for the purposes of Part II of the 1990 Act except for section 34(2). The effect of this provision is that the duty of care does not apply to occupiers of domestic property where the waste is produced on the property.

¹ S.I. 1996 No. 972.

² S.I. 1992 No. 588.

³ Regulation 1(2) of the 1992 Regulations provides that “construction” includes improvement, repair or alteration.

⁴ Including waste arising from work preparatory thereto.

4. In the Department's view, where asbestos waste arises from a domestic property it is household waste for the purposes of Part II of the 1990 Act other than section 33(2). One of the effects of this is that the waste collection authority has a duty under section 45(3) of the 1990 Act to arrange for its collection when the person who is in control of it requests the authority to collect it. However, the authority may recover a reasonable charge for **the collection** of the waste from the person who made that request.

5. There are also other effects. For example, section 51(1) of the 1990 Act imposes a duty on each waste disposal authority to arrange for the disposal of asbestos waste collected in its area by waste collection authorities as household waste; and for places to be provided at which residents may deposit asbestos waste as household waste free of charge (ie what are generally known as civic amenity sites).

6. In practical terms, however, a difficulty may arise in distinguishing between asbestos waste as a separately identifiable waste and asbestos waste which arises from works of construction or demolition on a domestic property. Where it arises from works of construction or demolition it is to be treated as industrial waste for the purposes of Part II of the 1990 Act except for section 34(2).

7. Section 45(2) of the 1990 Act provides that a waste collection authority may arrange for the collection of industrial waste if requested to do so⁵. However, section 45(4) provides that the person who made the request is liable to pay a reasonable charge for both **the collection and the disposal** of the waste; and imposes a duty on the authority to recover the charge. Section 51 of the 1990 Act does not require waste disposal authorities to arrange the provision of places at which residents may deposit industrial waste.

8. In regulation 1(2) of the 1992 Regulations, "construction" is defined as including "improvement, repair or alteration". On the face of it, this would appear to give the term a very wide meaning. However, in order to avoid absurdities it is necessary in the Department's view to consider the purpose of treating such waste as industrial waste rather than household waste.

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Section 45(2) provides that this discretion may be exercised only with the consent of the appropriate waste disposal authority.

9. Household waste, industrial waste and commercial waste are each defined in section 75 of the 1990 Act by reference to the type of premises from which the waste arises. For example, household waste is what one might expect an ordinary household to produce in the course of living in its home. Construction or demolition of a house does not of course arise in the course of occupation of a home and the waste arising from such activity is very different in nature.

10. In between these two extremes there is a third situation, such as where a new roof is erected, possibly incorporating an attic conversion. In such a case the home may still continue to be occupied while the works are carried out, but the scale of the works may be significant and the waste arising would be comparable to that arising from construction of a building.

11. The Department would suggest that a sensible approach to the definition would be to say that “works of construction” includes works of improvement, repair and alteration which are analogous to or are carried out as part of building works. A simple rule of thumb might be to consider whether the works are of a type that a building contractor would normally be engaged to carry out. The Department would not consider it appropriate to include small-scale DIY-type tasks in this category as these are nowadays part of the normal enjoyment of a dwelling. However, any particular case would need to be considered in the light of its own facts.

12. It follows from this that it is the Department’s view that asbestos waste from a domestic property which is separately identifiable as such (eg ironing board mats or fire blankets), or asbestos waste from a domestic property which arises either from small-scale DIY-type tasks or work of a type which a building contractor would normally not be engaged to carry out, is household waste for the purposes of Part II of the 1990 Act other than section 33(2). In consequence of this, the provisions of sections 45(3) and 51(1) of the 1990 Act apply to its collection and disposal as described in paragraphs 4 and 5 above.